

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

August 27, 2003

9:03 o'clock a.m.

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Certified Court Reporter

Certificate No. 50020

1 THE MEETING OF THE UST POLICY COMMISSION held on
2 August 27, 2003, at 9:03 o'clock a.m., at the Arizona
3 Department of Environmental Quality, 1110 W. Washington,
4 Room 250, Phoenix, Arizona, in the presence of:

5 Michael O'Hara, Chairman

6 Harold Gill, Vice Chairman

 Roger Beal

7 Gail Clement

 Shannon Davis

8 Theresa Foster

 Tamara Huddleston

9 Andrea Martincic

 Myron Smith

10 George Tsiolis

11 ABSENT MEMBERS:

12 Leandra Lewis

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1 Phoenix, Arizona
August 27, 2003
2 9:03 o'clock a.m.

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4 P R O C E E D I N G S

5 CHAIRMAN O'HARA: I would like to call this
6 meeting to order. I would like to welcome everybody to
7 the August meeting of the UST Policy Commission. As you
8 know, we didn't have one in July, so we've got a pretty
9 full agenda. And I would like to get through all the
10 items because some of these were actually left over from
11 the June meeting. If we can keep our comments precise and
12 on point, maybe we'll get through the agenda.

13 I would like to begin with a roll-call on my
14 left. Roger.

15 MR. BEAL: Roger Beal.

16 MS. CLEMENT: Gail Clement.

17 MS. FOSTER: Theresa Foster.

18 MR. GILL: Hal Gill.

19 MR. O'HARA: Mike O'Hara.

20 MS. DAVIS: Shannon Davis.

21 MS. HUDDLESTON: Tamara Huddleston.

22 MS. MARTINCIC: Andrea Martincic.

23 MR. SMITH: Myron Smith.

24 CHAIRMAN O'HARA: Second order of business
25 is the approval of minutes from both May and June. Did

1 anyone have any corrections or amendments to the minutes?
2 Any motion to accept those?

3 MR. BEAL: I'll move we accept the minutes.

4 MR. GILL: Second.

5 CHAIRMAN O'HARA: We have a motion to
6 approve the minutes of the May and June meetings. All
7 those in favor please say aye. Opposed? Motion passes.
8 Minutes are approved.

9 Moving on to Item 3, ADEQ updates. First item
10 is the UST program stakeholder roundtable. And Shannon
11 Davis has some information for us.

12 MS. DAVIS: I think, as you all know,
13 Director Steve Owens has said he's going to take the
14 opportunity to look at UST issues in a broad way. He's
15 had, I'm going to say, six or eight meetings internally
16 over the summer, soup to nuts on the program. We have
17 looked at lots and lots of things.

18 Now, as he promised, he is going to go to the
19 outside. He has come up with a list of nine people that
20 he's asking to come and give him input on the UST program.
21 And I'm not -- everyone on that list has been invited, but
22 I'm not going to announce it because not everybody has
23 said yes. It is like notifying next of kin before you
24 make it public.

25 But the first meeting -- and I just got this in

1 my office when I came in this morning -- is scheduled for
2 September 19th at 1:00 p.m. He's looking, I think, for a
3 two-hour slot there. It is a Friday afternoon.

4 And I think how it's going to work is Steve will
5 open the stakeholder process, and I think he'll give you
6 some thoughts -- everybody some thoughts on what he's
7 seen, what he knows doesn't work really well, some changes
8 he's already made that, I think, makes things work better
9 right now. And then I think he is going to open it up and
10 get ideas from folks who are sitting around the table.

11 And I think after that, there will probably be
12 three to four hard-working sessions where I'll facilitate
13 a series of working sessions, not tightly structured but
14 I'll keep our nose to the grindstone. You all haven't had
15 the benefit of me chairing a meeting yet, so you might be
16 in for a shock. We'll move it along, be solution
17 oriented.

18 I think we want to have a conversation about the
19 general objectives of the program. Those always sort of
20 bubble up from the bottom, what the objectives are and
21 what the goals of the program are. I think it would be a
22 great time to take a look at the program again.

23 So we'll have three or four working sessions and
24 then probably have Steve back to the meetings and roll out
25 what the group has come up with. So I don't know what the

1 other dates are. I think Steve's calendar was the one we
2 were waiting for to schedule the first meeting. And I
3 hope to work with the working group and establish publicly
4 three or four meeting times ahead of time that everybody
5 can arrange their calendars for so we have some logistical
6 stuff.

7 CHAIRMAN O'HARA: Is this limited to -- does
8 it include SAF and UST issues? Is it all encompassing?

9 MS. DAVIS: All encompassing.

10 CHAIRMAN O'HARA: Total program, good.
11 Thank you.

12 Any questions?

13 And if any of the members of the public have
14 some comments, please bring forth a speaker slip. I don't
15 have any right now.

16 Moving on to Item 3B, the state assurance fund
17 section's monthly status report. Judy Navarrete.

18 MS. NAVARRETE: Well, it's on the -- in your
19 packets. In June, we made 101 interim determinations and
20 then there is a snapshot of how many appeals we had on the
21 books, informal, and then how many appeals -- formal
22 appeals we had on the books. And it is -- it is nice to
23 note that we haven't had a formal hearing in that time
24 frame. And the only formal hearing that we did have on
25 the books was a bankruptcy, and the party -- the other

1 party did not show up. So that's the one hearing that
2 we've had in the last few months.

3 In July, we made 114 interim determinations, and
4 then there is also a snapshot of how many informal appeals
5 we had on the books at that time and how many formal
6 appeals -- how many formal appeals we had on the books at
7 that time. And during that time frame, we didn't have any
8 formal appeals go to hearing, except that one bankruptcy.

9 And I would like to summarize in saying that
10 during the year -- I don't think I put that on the report
11 anywhere. But for the year, we ended up with 1196 interim
12 determinations for '03.

13 CHAIRMAN O'HARA: Do you know how many
14 applications you received in '03?

15 MS. NAVARRETE: Yes, I do. As a matter of
16 fact, it's on our -- 600 and something. It is on our
17 presentation this morning.

18 CHAIRMAN O'HARA: You basically worked off
19 596?

20 MS. NAVARRETE: Plus.

21 CHAIRMAN O'HARA: Great.

22 Any other comments? Questions?

23 Good job, Judy. Thanks.

24 Moving on to Item 3C, the UST corrective action
25 section's monthly status report. Ian Bingham present.

1 MR. BINGHAM: Good morning. Ian Bingham,
2 ADEQ. In your packets both for June and July, we do have
3 the numbers and, in response to the last meeting, some of
4 the questions that we were asked to try and address,
5 defining some of the codes that we were using in the
6 spreadsheet. And, also, we have sections for new items
7 added to those lists and also what was removed from the
8 last reporting period, again, to kind of keep people
9 abreast of what changes were made as the reporting periods
10 moved along.

11 The first question before I really get into it
12 is, has what we've done answered some -- I think it was
13 Ms. Martincic that raised some of the questions and
14 Ms. Foster also. Just like to know if we're coming close
15 to hitting the mark.

16 MS. MARTINCIC: I just have a question.
17 Under April, it says "received eight." And then it shows
18 reviewed but not approved, two; reviewed and approved,
19 eight. Those aren't going to add up because --

20 MR. BINGHAM: What's in-house is --

21 MS. MARTINCIC: "Received" means what you
22 got that month. You may be reviewing one that was
23 received in March.

24 MR. BINGHAM: The prior month, exactly.

25 In one trend, just to point out, if you look at

1 the closures per month versus how many LUSTs we were
2 opening, you will see on a monthly basis we are closing
3 more sites than we are opening, if you go across.

4 And one other item to note, just to, again,
5 clear up some confusion, the SAF work plans and the
6 appeals, our numbers we're giving to Judy. It is just
7 being reported in one packet and one set of numbers,
8 again, to avoid confusion. So all SAF-related appeal
9 numbers are being reported by Judy Navarrete. And our
10 portion of SAF applications we provide to her are included
11 in those numbers, again, to alleviate some of those
12 confusions.

13 CHAIRMAN O'HARA: Any questions for Ian?

14 MR. SMITH: Ian, for the LUSTs opened for
15 April, May, June, and July -- for all of 2003, is the
16 trend downward?

17 MR. BINGHAM: Compared to previous years?

18 MR. SMITH: Yeah.

19 MR. BINGHAM: Yeah. We still are seeing
20 fewer LUSTs reported on a monthly basis and annual basis.

21 MR. SMITH: Great.

22 MR. BINGHAM: Mr. Gill, you had a question?

23 MR. GILL: I can't find -- what does the
24 asterisk mean on the work plan?

25 MR. BINGHAM: The note gotten taken off.

1 Our work plans now are going to be reported with the SAF
2 numbers to avoid -- The only work plans we deal with are
3 SAF related. And if you'll recall at the last meeting,
4 there was some confusion because were seeing SAF numbers
5 in two different reports. So our attempt was to just have
6 one reporting on SAF-related activities through Judy
7 Navarrete. And we provide her our numbers for
8 reconciliation and for report purposes.

9 CHAIRMAN O'HARA: Any other questions for
10 Ian?

11 MS. MARTINCIC: I have just a question.
12 Just looking at this -- I haven't looked at this in
13 advance, so... But the state -- the site characterization
14 reports, it looks like there is still lots that have been
15 submitted to date and have not been reviewed or approved
16 yet. Is that just -- I mean...

17 MR. BINGHAM: Matter of resources.
18 Hopefully next couple of months you are going to see a
19 dramatic change. In that the SAF backlog has been
20 reduced, I'm getting my --

21 MS. MARTINCIC: That's a direct correlation
22 of the fact that some of the staff shifted to help with
23 the other --

24 MR. BINGHAM: To help to pump them all out.
25 But within the next two months, you should see that number

1 dramatically reduce.

2 MS. MARTINCIC: Thanks, Ian.

3 MR. GILL: Judy, the number of active
4 applications, is that the backlog now? Is that what we're
5 calling backlog?

6 MS. NAVARRETE: That's active. That's what
7 we've got in-house. No, they are not all backlogged.
8 Some of them we just received recently.

9 CHAIRMAN O'HARA: 61.

10 MR. GILL: Any idea -- to go to Ian's
11 comment, any idea when the resources -- the people would
12 move back to --

13 MS. NAVARRETE: They moved back yesterday.

14 MR. GILL: That's why you are saying it
15 should pick up dramatically, okay.

16 CHAIRMAN O'HARA: Myron.

17 MR. SMITH: Go ahead, Theresa.

18 MS. FOSTER: Mr. Chairman, Ian, is there any
19 way that DEQ might track the LUST cases that are open to
20 determine, of those cases, why was there a release? Like,
21 if someone pulls out a double-wall fiberglass tank that
22 has all the whistles and bells, does that mean that these
23 new upgrades will prevent losses? Of all these LUST
24 cases, were they from older tanks that didn't meet the '98
25 requirements? Were they overfill? Were they due to

1 faulty equipment? Would it be beneficial for DEQ to track
2 that to prove to the general public that the 1998
3 requirements do work?

4 MR. BINGHAM: Several questions in there.
5 Yes, that would be extremely useful information.
6 Unfortunately, our database system is not equipped to
7 handle it. So to answer questions -- And it's something
8 we've been trying to do for -- "we" being Ron and I, for
9 quite some time, trying to figure out ways, especially for
10 releases occurring, I would say, mid '90s on. There has
11 been a lot of upgrades that have taken place long before
12 the 1998 deadline. We simply do not have the tools to be
13 able to address that question. But it is probably the
14 biggest question, has the upgrade requirements been --
15 have they worked? Just don't have the ability to do that
16 right now.

17 MR. GILL: Is there some -- I'm sorry.

18 CHAIRMAN O'HARA: Shannon.

19 MS. DAVIS: Mr. Chairman, just to follow up
20 on what Ian said, one of our major, major pieces in the
21 internal review of the programs was to cut and paste
22 funding to get our USTRACK database. When we get that
23 designed -- Judy, I don't know how long it's going to take
24 to develop that or get it working. You would have a
25 better sense. Just imagine we'll get funding for it, and

1 then how long?

2 MS. NAVARRETE: After we get funding for
3 it --

4 MS. DAVIS: Just imagine that piece.

5 MS. NAVARRETE: Once we got the funding, we
6 would probably be able to develop the modules we need in
7 about a year after the requirements are gathered again and
8 then add the modules. Would be about a year.

9 MS. DAVIS: Theresa, I hear what both of you
10 are saying. I think it is a really valuable question. I
11 think it is worth -- we are so resource strapped just
12 because of the shifts. We'll see what we can do in the
13 meantime. I can't promise anything, but I think it is a
14 great way to look at it.

15 CHAIRMAN O'HARA: Myron.

16 MR. SMITH: Ian, I see a lot of deficiencies
17 and disapprovals on the various categories. Any
18 commonalities?

19 MR. BINGHAM: What are the common
20 deficiencies?

21 MR. SMITH: Is there a trend? Is there a
22 group that just -- the deficiencies are the same? I guess
23 what I'm getting to, do we need to revisit the guidance
24 document? Is something not clear, or is it just all over
25 the board for these?

1 MR. BINGHAM: I would say probably the
2 lion's share of LUST sites aren't even subject to the
3 rules right now. So compliance with the guidance and the
4 rule is a choice that the owner-operator makes. I think
5 probably the biggest -- the single biggest item that
6 causes the deficiency is just not enough information
7 provided to us or maybe just the information is summarized
8 in a way that there is still major holes, that we're
9 unable to really piece it together.

10 I think if you look at the deficiencies coupled
11 with the appeal rates that we're getting, what we're
12 asking -- And I think we are doing a lot more telephone
13 calls and more conversation, so I think there is a lot
14 less confusion. But we are moving forward. I do think
15 the guidance is working. It is just a matter of getting
16 some of the old sites and getting some of the information
17 we need to move some of these forward.

18 And also, what we have seen from looking at some
19 of the lists, we have done some inventory and gotten a lot
20 of old reports. By putting this out, Hal sent us lists of
21 CAPs, SCRs that weren't on there that we didn't even know
22 we had in-house because our database didn't tell us. So
23 some of those, too, that we are reviewing are three, four
24 years old. We just need some missing information.

25 In terms of guidance, I think the guidance is

1 still fairly adequate. The items that are still missing
2 are what we are discussing in the technical subcommittee.

3 CHAIRMAN O'HARA: Hal.

4 MR. GILL: Ian, we know that always -- part
5 of the biggest problem with any guidance and rule and
6 stuff is the overlap from the old sites. Is there any way
7 to -- I have been asked this by a number of consultants.
8 How many of the new CAPs, new SCRs, whatever, are under
9 the new guidance? Is there any way to track that and see
10 how well that's working compared to all these? In other
11 words -- Because there is some of the guidance that
12 affects the new rule where the old sites are not under
13 that yet. So there is still a lot of confusion about how
14 that works; and it overlaps into the SAF, too.

15 MR. BINGHAM: Is there is a way? I'm sure
16 there is a way. If you want us to do it, I can find a
17 way. It is not something I'd actually thought in my mind
18 to break up, CAP under the old rules, CAP under the new
19 rules. If there is a need, I'm sure we can figure out a
20 way to do that.

21 MR. GILL: I hear all the time from
22 consultants that they're still confused on how and when
23 they go to the new rule. Some things are real clear-cut.
24 Other things, when you've got an existing CAP or something
25 like that, is there a point that we do things under the

1 new rule, under the new guidance, or -- especially for
2 work plans, when you're set -- when you are doing a set
3 thing based on an approved work plan? People are just
4 really confused about when do we switch over to the new
5 requirements under guidance and rule. I know Joe's
6 explained that a couple of times. I still keep getting
7 lots of questions.

8 MR. BINGHAM: Is it the same question over
9 and over or just a multitude of different questions?

10 MR. GILL: It depends on where they are in
11 the process. A lot of people have approved work plans
12 that are a certain -- that are in a certain place. And
13 some of these work plans -- As you know, I think we're
14 beyond the '98, '99. But there is at least some 2000 work
15 plans out there that are set up under a whole different
16 guidance structure and rule structure. Well, there wasn't
17 a rule.

18 MR. BINGHAM: The first thing that comes to
19 mind, let's take a look at the language. We wrote
20 something up regarding the applicability, not only in the
21 rule section but in the guidance. I think the first place
22 probably you and I need to look at is, is the language in
23 the guidance not sufficient? If it isn't, let's enhance
24 it. I think that might be a great bulletin item. And if
25 there is still those outliers that still can't fit, I

1 would say give us a call. Call myself, Joe Drosendahl.

2 MR. GILL: The question was asked at the
3 program conference, and Joe responded to it then. I think
4 it would be helpful if we can get something on the
5 bulletin so people have some place to go to figure out
6 where they are.

7 MR. BINGHAM: Let's look at the guidance.
8 We wrote this thing a couple years ago. We put it into
9 play. If it turns out it's not clear, let's look at that.
10 And we can try and find a better way of putting it in
11 writing, if what's there is not sufficient. And then that
12 could be another bulletin item. I see no problem with
13 that at all.

14 MR. GILL: Thank you.

15 CHAIRMAN O'HARA: Any other questions for
16 Ian?

17 Thank you, Ian.

18 Moving on to Item 4, technical subcommittee
19 update. Our technical subcommittee chairman, Hal Gill.

20 MR. GILL: The agenda basically says
21 "update." And I had originally sent in a number of
22 bullets, and you all do not have those bullets. I'll just
23 kind of go through them. We -- the last -- I think all
24 the Commission members also have the meeting summary which
25 touches on most of these issues. Basically, we looked

1 at -- one of the issues was a discussion -- was a
2 carry-over of a bulletin topic for discussion that had to
3 do with a cap and limitation of schedule for volunteers.
4 Basically, the response to that is that the DEQ senior
5 management is looking at developing the position because
6 the issue, again, where we run into the problem -- we've
7 run into this problem in the past with volunteers, is
8 what's -- we don't want to hinder the incentive that the
9 volunteers have to clean up their sites.

10 In this particular instance, the volunteers
11 were -- had been submitting work plans, or some of them --
12 the issue that brought this forward, they submitted work
13 plans and were waiting for monies at that time to be
14 encumbered before they moved forward. The monies aren't
15 encumbered anymore. But the issue is can the volunteers
16 wait till they reach the point in their ranking to where
17 they can get funded as soon as they do their work?

18 And the DEQ had an issue with it in
19 49-1016(c)(4). The language says, "In a matter consistent
20 with" everybody else. And so there is the issue; and that
21 is always the issue with volunteers, is that they're a
22 little different from the other regulated public in that
23 they are volunteering to do this cleanup. So the issue
24 is, again, an issue of incentive. DEQ is looking at a
25 position -- developing a position on that issue.

1 The next issue we discussed was DEQ is working
2 on a flow chart for the -- a CAP process which includes a
3 detail on the CAP modification because there was a
4 discussion on -- there was some confusion on when and how
5 you could do a modification to the CAP without -- and the
6 primary issue was without completely stopping remediation.

7 And so one thing we asked for that DEQ is
8 working on -- I might ask them the status of this -- is
9 they are coming up with a flow chart that shows the entire
10 CAP process and also a blow-up of the modification process
11 so we can see just exactly how that's to be done. And
12 then in all these processes, we're looking at how that
13 ties in with the SAF. And so they're working on that.

14 Ian, do you know what the status on that flow
15 chart is?

16 MR. BINGHAM: Again, we should meet the
17 commitment of getting the flow chart for the next
18 technical subcommittee.

19 MR. GILL: Great, thanks.

20 And then the next one was the SAF process flow
21 chart, which was finalized. I don't know if everybody's
22 seen it. It is available. I don't know how many copies
23 they have downstairs.

24 MS. NAVARRETE: They keep ten at all times.

25 MR. GILL: It is a monster flow chart. Was

1 it four bucks?

2 MS. NAVARRETE: Four bucks.

3 MR. GILL: It is four bucks. You can get it
4 down at the -- It is a flow chart for the SAF process
5 which we'd asked for a couple meetings ago. And SAF got
6 together with Gail and Andrea and worked it up. And no
7 one can understand it. It looks like something I worked
8 on.

9 MS. NAVARRETE: Wait a minute. That's why
10 Gail and Andrea were there.

11 MR. GILL: You have to spend some time
12 looking at it to understand it. And I think this was the
13 whole point of asking for it, is it is a very complicated
14 process. And once you can see it, at least -- I guess if
15 you are a visual person, it may help. But you can pick
16 them up downstairs. I guess they only have ten. It will
17 be a mad rush at the break.

18 MS. CLEMENT: Can I comment on that,
19 Mr. Chairman and Hal? I just want to thank the SAF folks
20 for putting that together in a very short period of time.
21 It is a complicated process. It wasn't a simple task to
22 do, and they turned it around very quickly. So the flow
23 chart does represent the process. But as Hal says, the
24 process is complicated; therefore, the flow chart is
25 complicated. But thank you very much.

1 MR. GILL: Yes, thank you.

2 The next bullet item on the update that we
3 looked at in the subcommittee, one of the -- I think it
4 was Leandra Lewis, and she is not here today. But one of
5 our discussion items was there was some confusion still
6 with the AN letters that were coming from SAF as far as
7 exactly -- and this was creating some of the appeals -- as
8 far as exactly what was being requested. So DEQ and SAF
9 are looking -- internally looking at the AN letters to
10 figure out how they can be more clear.

11 There was one -- the last time we -- the Policy
12 Commission voted on including on the bulletin the UST
13 groundwater monitoring guidance implementation plan which
14 went in concert with the -- whatever it is called.

15 MS. NAVARRETE: Those have been submitted
16 now. Joe did the formatting, and I submitted them for the
17 bulletin last Thursday.

18 MR. GILL: They should be on soon?

19 MS. NAVARRETE: They're working on
20 restructuring. So it is a little bit behind, but it
21 should be on there this week.

22 MR. GILL: Basically, as you all probably
23 remember, this is -- it's the guidance for sampling
24 frequency during the characterization process, during the
25 review process, and approval process for DEQ. And there

1 was one thing that I asked last meeting if it could be
2 added. One little window that we forgot about was once
3 the corrective action plan is approved for construction of
4 a remedial system, sometimes this can take eight, nine
5 months to a year. There is a lot of permitting, depending
6 on the remedial system. There could be a long time
7 period.

8 So I had suggested that we might add to this
9 implementation plan a section that if -- once the CAP was
10 approved, the sampling frequency would continue based on
11 what was approved in the CAP. And that was what -- DEQ
12 agreed with that, so basically that was added to the
13 implementation plan.

14 The implementation plan basically deals with
15 areas that aren't necessarily covered in the sampling
16 frequency table that came out. And there is a number of
17 holes that you -- like, the sites that had already been
18 approved and there was no sampling frequency established.
19 That's what the implementation plan is for. It addresses
20 those facts.

21 Any discussion on any of those issues?

22 CHAIRMAN O'HARA: Let the record reflect
23 that George is present, George Tsiolis.

24 MR. GILL: The next parking lot -- the next
25 issue that we do in every one of the subcommittee meetings

1 is we look at the parking lot issues for discussion.

2 There was three things -- And actually the next meeting
3 we'll be back to discussing the groundwater study. What
4 I'm trying to do to move things along is two-thirds of the
5 meeting may be groundwater study but at least one-third
6 I'm trying to put forth one more of the parking lot issues
7 so we're not just leaving those behind, although there is
8 typically going to be quite a lot of overlap. So we may
9 be able to handle some of the parking lot issues with the
10 groundwater study discussions.

11 The three that are on the table now that we are
12 discussing currently, and we'll be doing next week, is the
13 CAP cradle-to-grave concept. There appears to be, to many
14 of us -- I don't know if ADEQ agrees. There appears to be
15 a shift in what we understand is the concept of the CAP
16 being cradle to grave or basically meaning that it's --
17 the CAP as presented has to be from the point of site
18 characterization to closure. And there is some discussion
19 that it does not necessarily need to be that
20 all-encompassing, which we agree with; but we have to
21 discuss that and get that information out on the bulletin
22 because, as I mentioned at the meeting, right now that is
23 not understood at all in the regulated public.

24 We're discussing presumptive remedy which, I
25 think, we changed the name because what we're thinking of

1 as presumptive remedy is not the same as EPA's. So we are
2 having to look at changing the name so there is no
3 confusion.

4 And then we are looking at pilot and feasibility
5 studies and tasks.

6 The third issue -- and I don't -- I'm not sure
7 that we can discuss this because Al simplified the agenda
8 and simplified this one right out of it. I had asked --
9 there was a comment made last meeting -- last Policy
10 Commission meeting by Tamara and by Shannon, which I don't
11 believe was exactly accurate, having to do with what
12 issues could come to the bulletin board. And I wanted to
13 discuss that but it's not --

14 CHAIRMAN O'HARA: It wasn't on the agenda
15 last time either. It is more of a process issue, what
16 comes to the Commission, correct? I feel like you
17 probably should be able to discuss it, more process of
18 what comes to us. What were your thoughts on it?

19 MR. GILL: I guess what -- we were
20 discussing what had to come as far as policy and the
21 guidance and basically what is going on the bulletin had
22 to come through the Policy Commission. And Tamara was
23 accurate when she said that basically we just make a
24 recommendation, which is fine. But that wasn't the issue.

25 The issue was that any guidance per statute, any

1 substantive policy or guidance, before it is issued,
2 before it is implemented has to come to the Policy
3 Commission. Now, whether we're making a recommendation of
4 whether it is adopted or approved or ignored or not is
5 fine, but it has to come here.

6 Now, the issue was do we have to do that because
7 that is holding up the process. I agree with that, but we
8 need to figure out how to move things through rapidly to
9 put them on the bulletin so we don't delay the process.
10 But by statute, it has to come to the Policy Commission.

11 And we may be able to do it without any
12 discussion at all, which would be fine. But the point was
13 we didn't -- The whole idea of establishing the bulletin
14 was that there were too many things that were just coming
15 out of the blue that were affecting a wide range of
16 owner-operators that had never had any discussion.

17 MS. NAVARRETE: Hal, I want to know what's
18 coming out of the blue.

19 MR. GILL: Well, the first two that came on
20 there --

21 MS. NAVARRETE: The first one went through
22 the technical subcommittee. The first one was voted on by
23 the Policy Commission.

24 MR. GILL: The first two didn't come through
25 anybody. The insurance?

1 MS. NAVARRETE: Yes, they did. The first
2 one did. Not the insurance, the first one did. I'll go
3 back to the meetings and bring it. The first one was
4 voted on by the technical subcommittee, brought to the
5 Policy Commission.

6 MR. GILL: That's fine. Then I was
7 inaccurate saying "all of them." But the point is there
8 were issues that were going directly to the bulletin. And
9 that's what Shannon said last time, there is certain
10 things that we can put right on the bulletin. According
11 to the statute, that isn't accurate.

12 CHAIRMAN O'HARA: My reading of the minutes
13 last meeting, the specific example you were using was the
14 one where you had written a letter two years prior to
15 someone. And that was an existing policy, and you were
16 merely posting that existing policy. It wasn't a new
17 policy.

18 Is there a distinction between existing policy
19 you want to get out there to just formalize it versus new
20 policies that per statute should come here first?

21 MS. DAVIS: Mr. Chairman, I think it is more
22 of a legal question splitting hairs about what is
23 substantive policy and what is information. And I think
24 that's where the difference is. My objection last time
25 was that not all information needs to be posted through

1 here, and that was more my intent rather than saying
2 substantive policies don't need to come through here.

3 MS. HUDDLESTON: I don't really have much to
4 add to that. Statute requires substantive policies be
5 reviewed by this Commission. Not everything that goes on
6 the bulletin will be substantive policy.

7 CHAIRMAN O'HARA: I think we have gone down
8 this road before. Can you provide a brief definition of
9 "substantive"? Is it substantive versus procedural?
10 Substantive meaning important? Is it a legal term?

11 MS. HUDDLESTON: There are -- there's -- I
12 would have to go back and review before I could do a brief
13 definition of that. I could do maybe a two-hour one, but
14 I don't think we want to go there.

15 CHAIRMAN O'HARA: Okay.

16 MR. GILL: Here's the statutory definition,
17 "Written expression which informs the general public of
18 the agency's current approach to or opinion of the
19 requirements of the federal or state constitution, federal
20 case statute, administrative rule, regulated final
21 judgment of a court, competent jurisdiction including
22 where appropriate agency's current practice, procedure of
23 method of action based upon approach or opinion."

24 So it's -- I think basically what we were -- it
25 is obviously wide open. I think what was understood by

1 everybody is that it was the agency's current approach to
2 an issue, or whatever, that affected all owner-operators.

3 MS. HUDDLESTON: There is also all kinds of
4 opinions and, I think, even a couple cases on what is
5 substantive policy and what is guidance. That really
6 doesn't get you there.

7 MR. GILL: I know. According to this, it is
8 even guidance is supposed to go.

9 CHAIRMAN O'HARA: That affects the
10 substantive rights of owner-operators.

11 MR. GILL: "Substantive policy statement" as
12 defined by 41-1001 or a guideline issued by the director
13 is supposed to come here.

14 I understand -- I understand what you are
15 saying, Shannon, is that the issue with the letter is it
16 was something that was already in place. And I agree, we
17 want to just move it right on through. I didn't want it
18 misunderstood, that we may -- should have some kind of
19 discussion if there is a -- if not everyone believes that
20 that is already in place or that it was an existing policy
21 that is just now being reviewed. I don't want to stop --
22 slow things going through. We need to make sure that
23 everybody agrees that -- And the letter is not a good
24 example because that had already been approved and agreed.
25 But we want to make sure everybody agrees this is the

1 policy that everyone is on board with.

2 MS. MARTINCIC: I have a question. Is there
3 something new that has happened that you feel has not been
4 posted, or is this just a rehashing of past issues?

5 MR. GILL: It was a comment in the last
6 meeting.

7 CHAIRMAN O'HARA: It seemed to indicate,
8 from my reading of the minutes also, that the policy could
9 be posted to the board and that we would look at it on the
10 back end. Only if we had some type of disagreement, then
11 we would voice our disagreement, which is kind of counter
12 to what the statute implies, that beforehand we need to
13 take some... The comments may have been specific to a
14 particular policy and not as a general comment.

15 MR. GILL: I agree where the problem was if
16 the reason that -- if it's something that is the general
17 way that the DEQ is doing it now, doing the process or the
18 policy or the guideline now, if it is different than what
19 is understood -- and this is what we were running into,
20 all the problems with appeals, is if it's different than
21 what is understood currently, it needs to have at least 30
22 days for everybody to -- before it's implemented for all
23 the regulated public to see it's out there.

24 MS. MARTINCIC: Can't we then move --

25 MS. HUDDLESTON: No, we can't move today

1 because it is not on the agenda.

2 MS. MARTINCIC: I was just trying --

3 MS. HUDDLESTON: You can't take action on
4 it.

5 MS. MARTINCIC: I am just trying to prevent
6 us from talking about this for an hour and a half and not
7 have anything result from it and have it delayed another
8 month and another month.

9 CHAIRMAN O'HARA: What would you be moving?
10 Would it just be reaffirming the statute?

11 MS. MARTINCIC: Or just affirming that this
12 group would like to see policy changes that come from ADEQ
13 before they get posted to the bulletin if it is not
14 something that was already in existence. That's what I
15 was going to try to have us as a group agree to, if we all
16 agree that's what our intent was last meeting.

17 MS. HUDDLESTON: I think the most you can
18 agree to today is to have it on the agenda for next
19 meeting.

20 MR. MERRILL: Mr. Chairman, I can't hear and
21 I'm sitting right here.

22 CHAIRMAN O'HARA: We'll speak up.

23 MS. DAVIS: Mr. Chairman, the agency will
24 bring forth any new policy statements or decisions from
25 the agency for review by this Commission in accordance

1 with the statute. A policy that's already existing that
2 is preexisting, if it goes on the bulletin, we'll put that
3 on the bulletin and inform the Commission that existing
4 policy has been put on that.

5 And then, also, the agency, you know, just to
6 remind people -- I think an important thing to say is the
7 agency wants to set up processes where everybody gets to
8 know what's going on. There is no sense of we don't want
9 to share information at an inappropriate time. So I think
10 it is a matter of figuring out how to do that and then
11 keeping the balance of keeping the work going and not
12 bogging the process down with waiting to get stuff. I
13 think we're on the same page there.

14 We'll go through the substantive policy. Just a
15 reminder so that people aren't under the assumption that
16 policy is enforceable, 41-1001 says it is advisory only.
17 So I think that's important for everybody to understand,
18 that substantive policy is advisory. I don't think there
19 needs to be a motion, just for us to reiterate as an
20 agency that we'll bring new policy before the Commission.
21 And if it needs to come up through the technical
22 subcommittee, we'll do that as well. Also, we'll reserve
23 the right to put informational kinds of things on the
24 bulletin at any time.

25 And Judy and Ron and Ian, if those are germane

1 to everyday business, we need to get those in the packets
2 and send them out to the Commission in our monthly
3 mailings. I think -- Where's Al? See how important those
4 minutes are. People get to disagree with everything
5 you've said.

6 If you just make sure in the narrative minutes
7 next month that what I just restated -- and I'll work with
8 you on the language that's in the minutes -- so that's on
9 the record of how we're working with that.

10 CHAIRMAN O'HARA: Any comments or questions?

11 Hal, have you completed your technical
12 subcommittee update?

13 MR. GILL: I want to thank Shannon. I
14 definitely didn't want to slow the process down. I wanted
15 to figure out -- Everybody understood what we were doing.
16 Basically I'm through.

17 MS. CLEMENT: Mr. Chairman, Hal, I just
18 wanted to compliment DEQ on the last technical
19 subcommittee meeting that we had. We're making real
20 progress at resolving a lot of outstanding, unclear
21 technical issues. And the format that they've put
22 together and the responsiveness has greatly improved since
23 I started participating. And I really want to thank all
24 the people at DEQ for their responsiveness in moving this
25 along and Hal's leadership also. Thank you.

1 MR. GILL: I agree. I had planned on saying
2 it at the beginning, but Al took it out of my minutes so I
3 didn't bring it up.

4 MR. JOHNSON: I think everybody should let
5 me know, and then we can cut these meetings a lot shorter.

6 MR. GILL: I definitely agree. Actually,
7 the last two meetings we have made a lot of -- moved
8 forward a lot. We've had some very productive meetings
9 the last two subcommittee meetings. Again, I agree
10 completely with Gail.

11 CHAIRMAN O'HARA: Myron, did you have a
12 comment?

13 MR. SMITH: When is the next scheduled
14 technical subcommittee meeting?

15 MR. GILL: The second Wednesday of the
16 month.

17 MR. JOHNSON: The 10th.

18 MR. SMITH: September 10th?

19 MR. JOHNSON: Yeah.

20 CHAIRMAN O'HARA: Any other comments from
21 members of the Commission on the technical subcommittee
22 update?

23 MR. GILL: The meetings are now all held in
24 the fish bowl, the fourth floor conference room.

25 CHAIRMAN O'HARA: One public comment on

1 technical subcommittee updates from Brian Beck. Mr. Beck.

2 MR. BECK: Brian Beck. Just addressing the
3 comments that were made by Shannon and the AG's office,
4 the actual -- there were two things that were important to
5 us. "ADEQ originated new policy and implemented them."
6 That's a direct quote by Shannon Davis. And the other one
7 is, yes, the UST is only an advisory committee.

8 There is two important things in point of law
9 that we believe that they missed. Under 49-1014, part B,
10 rules, policies, and guidelines, under part B, "The
11 director shall and may establish policies, guidelines for
12 the administration of the chapter subject to the
13 following. The director shall provide written notice to
14 persons regulated by this chapter before the effective
15 date of policy or guideline. Written policy" -- "written
16 notice shall be set forth of the effective date of the
17 policy or guideline. The policy or guideline should not
18 be retroactive or retroactively applied."

19 We contacted over 20 different RPs and various
20 consultants. We all came to the same conclusion that we
21 basically haven't seen anything in writing from the agency
22 since January 2001. So that's the first point. So we
23 feel the agency has completely missed an important section
24 of the law. You originate policies. You originate
25 guidelines. The people that are regulated under law,

1 under 1014, are not being notified.

2 And then under 49-1092, part (d)(3), UST
3 Commission, it says openly you have at least 30 days to
4 review and make written recommendations to the director
5 before the Department's adoption of substantive policies
6 or guidelines. There is still a big thing on what is a
7 substantive policy and what is a guideline. A guideline
8 is a guideline. It doesn't have to be substantive or
9 anything else.

10 Needless to say, regulated persons and this
11 Policy Commission hasn't seen anything realistically come
12 out of this agency. The regulated persons including
13 myself, anybody that is qualified by ADEQ to do UST work,
14 that's consultants and contractors, along with the RP, UST
15 volunteers, we haven't seen anything in writing from the
16 agency since January 2001.

17 CHAIRMAN O'HARA: Thank you. I don't
18 necessarily -- I just want to make a comment. I think the
19 process we're setting up, particularly the subcommittee
20 and the bulletin boards, are meant to address this
21 written -- the idea of getting the policy out there and
22 getting it written. Is that correct?

23 MR. GILL: That was something we haven't
24 discussed. I know that that language was in there, but we
25 hadn't discussed can the bulletin provide that written

1 notice?

2 CHAIRMAN O'HARA: I thought that was. You
3 mean written notice to the regulated community?

4 MR. GILL: It didn't really say in the
5 statute how you were supposed to do that. That was a
6 requirement. But prior to a few months ago, whenever it
7 was set up, the bulletin didn't exist either. I think
8 that's where Brian is coming from.

9 I don't -- I would suspect that the bulletin can
10 be the format to get that information out which, again,
11 goes to the importance of getting it on there as quickly
12 as possible. I definitely don't want to slow things down.
13 We have not really discussed it in that way. I think
14 that's probably what it will end up being, if that's...

15 CHAIRMAN O'HARA: Any other comments or
16 questions? Great.

17 Moving on to Item 5, the financial subcommittee
18 update. The issues related to insurance have dominated
19 our discussions for several meetings, particularly the
20 last meeting. And I think there is still some lingering
21 issues and questions. And it was going to be on the
22 agenda again for this meeting, but I think it is probably
23 a sufficient enough, substantial enough issue that we
24 should have a separate meeting on it in a subcommittee.

25 We have -- I spoke with a representative from

1 AIG who volunteered to come from Philadelphia that is very
2 familiar with UST and runs their UST claims area and would
3 like to come speak to us and answer questions to the
4 extent she can. She is bringing another claims adjuster
5 with her to answer questions. Any other insurance
6 industry representatives we would like to participate, I
7 welcome them.

8 I wanted to get some feedback from this
9 committee on whether or not that was an appropriate forum
10 for that, to have a separate meeting, and then separately
11 what specific issues you can forward to the representative
12 so they can be prepared to answer our questions. I'll
13 open discussion up.

14 MR. TSIOLIS: Mr. Chairman, I would
15 recommend that the members of this committee forward to
16 you by e-mail issues that you could then send to AIG. I
17 would say issues that members of the public are interested
18 in, too. Perhaps, they have some good ideas on issues
19 that should be discussed.

20 CHAIRMAN O'HARA: The sooner the better so
21 they have time to prepare. September 17th was the date
22 that was requested by the representative from AIG.

23 MS. MARTINCIC: I would just note that APMA
24 is going to be at the Pacific World Conference for the
25 weekend, and I know this is a huge issue for my

1 membership. If there is any way to meet before the 15th
2 or after the 18th, that would be preferable.

3 CHAIRMAN O'HARA: I'll have to check on
4 that.

5 MS. MARTINCIC: Otherwise, if we can arrange
6 for a call-in conference call or something.

7 CHAIRMAN O'HARA: You said after the 18th?

8 MS. MARTINCIC: Yeah.

9 CHAIRMAN O'HARA: You've got that roundtable
10 set up on the 19th. Maybe we can do that in the morning
11 on the same day. I'll check on the date, and we'll get a
12 notice out and get it through Al.

13 MS. MARTINCIC: I think it is a great idea.
14 I'll see if I can get other insurance representatives.

15 CHAIRMAN O'HARA: Do you have any comments
16 or questions? Please forward to me your questions so they
17 are prepared when they come in.

18 Any other comments, questions? Thank you.

19 Moving on to Item 7 -- Do you think you have
20 sufficient time, Andrea, to speak on this issue?

21 MS. MARTINCIC: I am going to have to leave
22 in about five minutes. I'd rather wait until I'm done
23 with that call.

24 MR. TSIOLIS: Mr. Chairman, I have an issue
25 on the DEUR that I would like to bring up. If I could

1 have three or four minutes of the Commission's time.

2 CHAIRMAN O'HARA: Can I ask you, do you want
3 to have those comments included when we address Item 7 or
4 do you --

5 MR. TSIOLIS: I think they are different. I
6 am not sure exactly what the discussion was going to
7 discuss with Andrea. Are you saying I should wait for the
8 following meeting?

9 CHAIRMAN O'HARA: If it's within the scope
10 of that item, I think it is appropriate to discuss it. If
11 it is outside the scope, we might want to put it on the --

12 MR. TSIOLIS: It is within the scope, but we
13 can wait until Andrea gets back.

14 CHAIRMAN O'HARA: It may be more appropriate
15 since we'll be on that subject. It will happen today.

16 Back up to Item 6, Policy Commission discussion,
17 Hal Gill, regarding the process for SAF reimbursements
18 related to the new Arizona Department of Water Resources
19 notice of intent to drill fees and well abandonment
20 requirements. I'll turn this over to Hal.

21 MR. GILL: As you're probably all aware, the
22 fees went up for the NOIs for well installation -- or for
23 technical borings. The first issue is a discussion with
24 the existing pre-approval work plans that have the \$10 fee
25 in there for the well installed. And knowing that when

1 the work is being done now for an existing work plan,
2 obviously that's going to be slightly over that amount at
3 150 per NOI now.

4 And I guess my question to SAF is: How is that
5 going to be handled? I assume the answer is going to be
6 the substitution form.

7 MS. NAVARRETE: We can do a substitution
8 waiver. Or if you don't have something to substitute, we
9 can always do a reimbursement.

10 MR. GILL: My question is not -- It's been a
11 while since I've looked at the substitution waiver stuff.
12 Does it have to be denied to -- before you can do the
13 substitution?

14 MS. NAVARRETE: No.

15 MS. MARSH: Kimberly Marsh. You can submit
16 the substitution waiver with the direct-pay application.
17 We will evaluate it during the initial review if you do
18 submit that request.

19 MR. GILL: Basically, it is an application
20 that you are turning in after the fact. You have already
21 done it. Then you can ask for the substitution at that
22 time?

23 MS. MARSH: Correct.

24 MR. GILL: There is no way to handle it if
25 it's already an application that's been submitted?

1 MS. MARSH: I'm thinking if you already
2 submitted an application a month ago, call us up and let
3 us know the application number and say you are going to
4 send us something to submit to that application, as long
5 as it is in the process of being reviewed. If the letter
6 has already gone out, it would have to go through the
7 appeal process.

8 MS. NAVARRETE: Then you could submit it at
9 that time.

10 MR. GILL: Okay. I'll get e-mails to all
11 the stakeholders just notifying them of that.

12 On a larger issue -- And I know Al Dulaney is
13 here from DWR, so he will hopefully be able to help me on
14 this. With -- And this -- I pulled up the DWR well
15 abandonment handbook. This has been an issue before in
16 application denials. I'm somewhat confused in looking at
17 the handbook.

18 CHAIRMAN O'HARA: Are you still on --

19 MR. GILL: No, this is the abandonment
20 requirements.

21 Was there not enough to pass on? If you look on
22 page 6 of the handout I just passed out, basically it's --
23 This is the DWR's requirements for abandonment for, it
24 says, alternative No. 2, the upper right corner, "Applies
25 to wells that do not penetrate aquifers including wells

1 that have gone dry and vadose-zone contamination issues
2 exist." And it basically spells out the abandonment
3 requirements basically about four sentences down, "The
4 well must be filled with one or more of the following
5 materials or mixtures: Cement grout (including neat
6 cement grout, cement-bentonite grout, sand-cement grout.)
7 That's the existing requirement for DWR for basically
8 wells that are -- that ultimately end up in the vadose
9 zone for whatever reason.

10 And now if you will turn to page 19, which is
11 basically questions and answers. And the top one -- the
12 question in the upper right-hand corner says, "What types
13 of openings in the earth are not subject to DWR's well
14 abandonment rule?" A2, "An injection well or vadose-zone
15 well that is subject to regulation by DEQ, provided that
16 DEQ has issued a letter or other document asserting
17 explicit regulatory authority over the well."

18 My first question is: Alan, how do these
19 differ? How is this not the one that I read previously?

20 MR. DULANEY: If I could speak,
21 Mr. Chairman. I'm Al Dulaney, Department of Water
22 Resources. The body of law that deals with wells has
23 developed over several decades now. And one of the
24 exemptions that was first written in was for dry wells and
25 other things that might be regulated by DEQ.

1 Alternative 2 that you are looking at really
2 refers to wells that formerly impacted or formerly
3 intersected the water table or wells that were vadose-zone
4 wells originally but exceed 100 feet. When we were
5 looking at No. 2 in that FAQ section on page 19, there is
6 a provision in the well definitions that provides for
7 exemption of certain wells that are regulated by DEQ.
8 Primarily this refers to the dry well program.

9 What we need to see basically is some sort of
10 letter or document from DEQ that says that they are
11 regulating that well, that they have imposed well
12 construction standards on that well, that they are dealing
13 with that well. Does that answer your question?

14 MR. GILL: You said it is primarily -- I
15 mean, it was primarily set up for dry wells?

16 MR. DULANEY: There's an exemption built
17 into DWR statutes for dry wells, yes. That's handled by
18 DEQ under the dry well program.

19 MR. GILL: Are we also using this one to
20 cover vadose-zone wells for remediation, VE wells? Is
21 that covered under this as well? That's where -- I think
22 that's where it's being used. But I'm not --

23 MR. DULANEY: I understand your conclusion.
24 The vadose zone or vapor extraction well question is one
25 that's come up often. Under rule, DWR doesn't regulate

1 wells that are less than 100 feet and do not intersect
2 groundwater. That would include most vapor extraction
3 wells. That means that you are not, by rule or statute,
4 required to file a notice of intent to drill prior to
5 installation of those wells, recognizing that
6 circumstances being what they are, often in the course of
7 drilling, you encounter dry wells -- or encounter
8 groundwater anyway in the course of constructing some of
9 those wells.

10 We recommend that people file a notice of intent
11 to drill for vadose-zone wells. And once that well is in
12 place, we would like to see the well properly abandoned in
13 accordance with the rule and this policy statement.

14 MR. GILL: Along those lines, at the bottom
15 of that same column, that last paragraph, "Although the
16 well abandonment rule does not apply to these types of
17 wells and boreholes, it is nevertheless recommended that
18 unused wells or boreholes that are not regulated under
19 DWR's abandonment rule be abandoned in a manner that will
20 protect the aquifer."

21 I guess this is where the question I posed to
22 DEQ, based on this discussion and primarily back to
23 page 6, that many of these borings and vadose-zone wells
24 are in areas that are -- the vadose zone -- where
25 contamination exists. I wonder if we shouldn't bring this

1 issue to the subcommittee for discussion because I know
2 there is a disagreement right now about how to abandon
3 these. Consultants that grout these borings are being
4 denied, saying you should just follow DWR's, which is the
5 upper 20 foot. But according to this language here, it
6 should be the entire boring. So -- but I do know we are
7 getting lots of denials for abandoning wells and borings.

8 MR. DULANEY: Our well abandonment handbook
9 does offer a standard method that does involve grouting up
10 the entire well bore itself, and that is the one that we
11 prefer. These alternative methods are just that,
12 alternatives that might provide a slightly less expensive
13 manner of achieving the same end, which is sealing off any
14 potential conduits to the subsurface from the surface and
15 protecting the aquifer.

16 MR. GILL: Basically you don't want to
17 leave -- I know we have been -- if it is a site that's
18 going to be remediated, we have been cutting back in the
19 ground because it is going to be remediated anyway. But
20 still it is a conduit because it's disturbed. So you
21 can't compact it when you are putting it back in the
22 ground.

23 MR. DULANEY: I should point out if those
24 cuttings are contaminated in any way, that is forbidden by
25 rule.

1 MR. GILL: I noted that.

2 CHAIRMAN O'HARA: Hal, you want to have this
3 issue in the subcommittee? Is that what you want?

4 MR. GILL: I think we should because there
5 is -- I think it sounds -- I am confused enough where I
6 assume hopefully that other people are confused.

7 MR. DULANEY: It is a confusing issue, Hal,
8 because of the jurisdiction. What is a well, what is not
9 a well, what does DWR regulate, what does it not regulate
10 is kind of a confused issue. It arises from the fact that
11 statute and rule were written pretty much before the onset
12 of a lot of site characterization, well site
13 investigations, and remedial efforts.

14 MR. GILL: They're for drinking water wells
15 basically, not environmental wells.

16 MR. DULANEY: That, too, right. That was
17 sort of an afterthought, and that produces a lot of
18 confusion. Perhaps, the well construction rule should be
19 revised or rewritten, but it is not high on the
20 Department's list of things.

21 MR. TSIOLIS: Mr. Chairman, if I could just
22 propose that this issue was not sufficiently read by the
23 technical subcommittee to be discussed here.

24 CHAIRMAN O'HARA: I agree with you. You are
25 going to move that to the subcommittee, correct, and bring

1 it back?

2 MR. GILL: That's up to the Policy
3 Commission. As I said, the issue -- the overriding issue,
4 of course, is denials and appeals of borings and wells
5 that have been grouted.

6 MS. CLEMENT: I move that it be taken to the
7 technical subcommittee.

8 MR. BEAL: I'll second.

9 CHAIRMAN O'HARA: All those in favor of
10 moving this to the subcommittee please say aye.

11 MS. FOSTER: Mr. Chairman, can we really
12 vote on it since it wasn't on the agenda for a vote?

13 CHAIRMAN O'HARA: We are just moving it to
14 the subcommittee. We are not really making a vote on it.

15 MR. GILL: Everything on the agenda is up
16 for a vote, according to the initial paragraph.

17 CHAIRMAN O'HARA: Any opposed say nay.
18 Motion passes. We will move it to the subcommittee.

19 Thanks, Hal.

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20         It is probably a good time to take a break.  It
21     is five after 10:00 according to my watch.  Let's return
22     in about 15 minutes.
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23 (Whereupon, a recess was taken from 10:05
24 o'clock a.m. to 10:23 o'clock a.m.)

25 CHAIRMAN O'HARA: The meeting is back in

1 order. We are still waiting on Items 7 and 8 for Andrea,
2 so we'll move forward in the agenda to Item 9, which is a
3 presentation by ADEQ regarding the unencumbering of
4 \$38 million from the State Assurance Fund. Turn this over
5 to Judy Navarrete.

6 MS. NAVARRETE: Takes just a second for the
7 lamp to heat back up. Did everybody get a copy of the
8 presentation from the...

9 Some of this presentation some of you probably
10 have seen before if you were at the Consultants Day. I
11 started to say "convention." Consultants Day. But I've
12 updated it since then.

13 When we started out -- This is on unencumbering
14 the funds, the accelerated payments. When Director Owens
15 came on board, he asked the SAF to conduct an analysis of
16 the State Assurance Fund to see if we couldn't unencumber
17 some of those funds to pay off some of our backlog and
18 still maintain some balances to pay our current
19 liabilities and long-term liabilities. So we did an
20 analysis of the fund. And at that time on May -- in early
21 May, the fund balance was 42 million, and we had
22 \$38 million of that encumbered for ranked pre-approvals.
23 Then we had about 32 million waiting in ranking, and the
24 rest was claims not yet processed.

25 So that just shows you what was waiting in

1 ranking in Maricopa at that time and in nonMaricopa at
2 that time, which was the \$32 million on the previous
3 slide. So May 14th, the SAF unencumbered the \$38 million
4 in Fund A and Fund B to pay claims. And as of that date,
5 we had an approximate amount of 13.1 million for
6 reimbursement applications and \$5.5 million that we owed
7 in direct-pay applications at that time.

8 So in May, we ranked 167 applications in Fund A,
9 Maricopa, and 287 applications in Fund B, nonMaricopa.
10 And in June, we ranked 120 in Maricopa and 23 in
11 nonMaricopa. And then I went on to July. I didn't just
12 do this year. I wanted to give you a three-month overview
13 seeing as to how we're into August now. Last month we
14 ranked 117 in Maricopa and 78 in nonMaricopa, which I just
15 want to give you a little overview of how many ranked
16 applications we've done in the last three months since we
17 unencumbered the funds. It is a total of 792.

18 So I want you to keep in mind that to put these
19 through the system, the same people are handling it that
20 are handling the determination letters and checks. And in
21 the last three months for May, June, and July we've made
22 377 interim determinations. So when you add up the ranked
23 applications and the interim determinations made in those
24 three months, I've loaded the front end up with a 1169
25 letters and checks to get out. We're backed up a little

1 bit there. They're just processing them as fast as they
2 can. But they also have the appeal determinations to get
3 out and everything. And I know I have had some calls, and
4 I have explained it to people. And they seem to
5 understand the impact of trying to get everything out at
6 once is taking us a little bit longer than we anticipated.
7 But we are getting through it.

8 And the good thing is the ranking points in
9 Maricopa are down to 66.5. They're -- currently in
10 nonMaricopa, we're current. And the ranking point is
11 zero. So when you get an application in there and it's
12 approved for payment, it will be paid.

13 MR. SMITH: Judy, before you move off of
14 that, if I may ask a question. Of the 1169, what does
15 that translate into dollars put out, approximately? Or is
16 it further in your slides?

17 MS. NAVARRETE: Well, the ranked
18 applications is 792. That was 22.5 million in Maricopa
19 and 16.5 million in nonMaricopa.

20 MR. SMITH: Thank you.

21 MS. NAVARRETE: That's approximate. It's
22 not the exact dollar amount. And the interim
23 determinations, I didn't get that number.

24 But this is just to show you over time how the
25 applications have dropped off a little. But this has been

1 reported in history for 2000, 2001, 2002, but I have
2 through the programmer that I have now for the database --
3 those numbers are inflated because we -- they were
4 counting the splits as an application. And so that is an
5 inflated number in 2000, 2001, 2002. There wasn't
6 actually that many applications submitted.

7 And also, when it came to the amounts requested,
8 they were overinflated by having the direct-pays added
9 into that amount requested. Once you have a pre-approval,
10 that amount is already in the database. If you add the
11 direct-pay to it, then you're counting that as a double --
12 you're counting it twice. So the previous years -- maybe
13 I'll do another presentation or just give you the number
14 maybe at the next Policy Commission meeting. But the
15 requested amount has been overinflated by the amount of
16 direct-pays that were submitted those years.

17 This year for Maricopa County, we had a
18 requested amount of approximately 5.6 million, and the
19 revenue from Maricopa County was 13.6. In Fund B,
20 nonMaricopa County, we had a requested amount of
21 13.3 million and a revenue of 15.1 million. So that's
22 what the 2003 looks like overall, a requested amount of
23 almost 19 million, and total revenues were 29 million for
24 2003.

25 And this was just another of applications

1 received, but I think 2001 and 2002 are inflated numbers.
2 But the application pay, they're correct, 718 were paid in
3 2001, 671 in 2002, and 967 but that was as of the end of
4 June, so that doesn't count July and most of August.
5 Those numbers are not in that particular screen. As it's
6 noted down there, it's as of June 30th.

7 And as Shannon mentioned before, the Director
8 has already held an internal review of the entire program
9 and oversaw it personally. And we'll begin conducting a
10 stakeholder roundtable on September 19th, I believe is the
11 first meeting. And it will be comprised of consultants,
12 lawyers, oil companies, all citizens, marketers,
13 contractors, owner-operators, everyone will be -- there
14 will be representatives from all those; and everyone's
15 input will be considered. And every facet of the program
16 from the claims processing to the site work will be
17 considered and risk to the public health and environment
18 will be our primary concern.

19 Thank you. Is there any questions?

20 CHAIRMAN O'HARA: First, let me go to the
21 Commission members. Any comments or questions?

22 MR. SMITH: Mike, I would like to see the
23 financial subcommittee take up the actuarial study again
24 in light of the changes that the SAF has seen and gone
25 through and see where we need to go because we said when

1 we had the study, we were going to revisit it. And I
2 think it's time we do.

3 CHAIRMAN O'HARA: Actually, what we had
4 talked about doing was having an update of that study
5 performed every year in comparing the assumptions they had
6 made to what has actually occurred. I don't think we ever
7 got authorized funding for that. We can put this on the
8 next agenda to discuss it more thoroughly.

9 Do you think that it's something that we as a
10 subcommittee can just kind of look at the actuarial study
11 and look at some of the numbers and try to make some
12 general assumptions? Or do you think we should authorize
13 the contractor to do another analysis?

14 MR. SMITH: I think there are enough smart
15 financial people here that I think we ought to give it a
16 go ourselves and see what we can glean out of it before we
17 go calling in a contractor and looking for money to pay a
18 contractor.

19 CHAIRMAN O'HARA: Any other comments,
20 questions on that?

21 MR. GILL: The premise of the actuarial
22 study has changed now. It is different. Unencumbering
23 the funds makes it a different ball game altogether.

24 CHAIRMAN O'HARA: I don't know if that's
25 true. I have to look at the study. I think the

1 unencumbering is just more of a procedural move to move
2 the money up faster.

3 MS. NAVARRETE: Move it out the door faster.

4 CHAIRMAN O'HARA: Total liabilities aren't
5 going to ever change, the ultimate amount of liability,
6 the ultimate amount of revenue. It juggles it around.

7 MS. NAVARRETE: It does because you have
8 that encumbered amount that's setting there, and then you
9 have these claims to be paid over here. And you still
10 have that in your balance sheet. So once you unencumber
11 that fund, you still have that liability but you have paid
12 off all of these.

13 CHAIRMAN O'HARA: I guess what I'm saying.
14 It is a timing difference more than a substantive
15 difference. It is not going to change the ultimate
16 numbers. I'll look at that actuarial study. It may
17 change the timing but not ultimately the day in which they
18 think it will break even.

19 MR. GILL: The point of the actuarial study
20 was to address the issue of the sunseting. And Theresa
21 brought it up a couple of times. That's one of our
22 mandates, is to look at that. We've looked at it a couple
23 times, and that's where we stopped because -- based on
24 that study saying it is going to take care of itself. I
25 think we need to look at that and see if somehow this has

1 changed.

2 CHAIRMAN O'HARA: Revisit that.

3 MS. DAVIS: Mr. Chairman, Myron, all the new
4 members got copies of the actuarial study. You requested
5 that, so everyone has it. If there is anything you would
6 like staff to prepare, let us know so we can get
7 information out in packets if -- let us know what sort of
8 support you would like for that.

9 MR. BEAL: I've got to be honest, I was
10 disappointed in the actuarial study because it did not
11 take into account processes that we were looking at at the
12 time, particularly RBCA and MTBE and now other chemicals
13 of concern. And I'm still going to have those same issues
14 with any investigation. Until we decide what it is that
15 we are going to be doing to a site, I think it is pretty
16 much impossible to say when you are going to be finished
17 paying for it. I'll just say if we don't know what we're
18 doing, a study to tell us we're finished is pretty
19 meaningless.

20 CHAIRMAN O'HARA: They did make some
21 assumptions on MTBE. Their assumptions were based on
22 other states. Generally, they said it wouldn't have a
23 major impact. That was the general assumption. It may
24 not be true. It was factored in. It just wasn't --

25 MR. BEAL: It was factored in so far out, it

1 isn't being affected.

2 CHAIRMAN O'HARA: We will have that in the
3 financial subcommittee meeting.

4 Any other Commission members have comments on
5 Judy's presentation?

6 I am going to open up to public comments on the
7 presentation. Mr. Kelley.

8 MR. KELLEY: Dan Kelley. Thank you,
9 Mr. Chairman. One comment, one question, please. Comment
10 would be many kudos, congratulations to Bob, Judy, DEQ and
11 their team. You are doing a great job moving the process
12 forward. I think managing the State Assurance Fund is
13 more of a risk reserve pool than my grandmother's
14 checkbook because it's a 21st century business practice.
15 Thank you very much for moving to the 21st century with
16 us.

17 The only question, Judy, if you could please
18 explain why you didn't have a lot of confidence in the
19 total application numbers and numbers relating to 2000 and
20 2001 -- was it 2000, 2001, 2002? Or was it just 2000,
21 2001? Just that issue.

22 MS. NAVARRETE: I think in the past --
23 because for a while until we started -- I started
24 correlating in my mind that we're getting -- the database
25 is saying more applications than we are actually getting

1 in. So we went back and we started investigating it. The
2 thing is the database was set up to count splits.

3 MR. KELLEY: Which means?

4 MS. NAVARRETE: That particular report
5 counted when someone turns in an application, say, for
6 \$100,000 but they want it allocated over four releases.

7 MR. KELLEY: It comes up as four
8 applications.

9 MS. NAVARRETE: It comes up as four
10 applications. It wasn't totaling the amount, so that
11 wasn't inflating the amount. What was inflating the
12 amount is when you count pre-approvals and direct-pays for
13 your total requested because you only count the
14 pre-approval amount.

15 MR. KELLEY: That part I understood. It
16 was -- the number of applications is more a function of
17 the way the internal computing was being done. And did
18 you have confidence -- what years do you not have
19 confidence? What years do you have confidence?

20 MS. NAVARRETE: This year I have confidence
21 in those numbers. I have the numbers for the other years.
22 I didn't have them in time to update this presentation.
23 But I did want to let you know that.

24 MR. KELLEY: Because we're now in 2004.

25 MS. NAVARRETE: 2003. Those numbers were

1 for 2003.

2 MR. KELLEY: Thank you. Thanks, Judy.

3 MS. DENFRO: Darcy Renfro. I just wanted
4 some clarification on the amounts -- total amounts paid.
5 One of the slides here says that of the \$38 million that
6 was authorized to be released, 13.1 have been paid out of
7 one fund and 5.5 out of another. Then you mentioned two
8 others.

9 MS. NAVARRETE: The 13 was what we owed in
10 reimbursements at the first of May, and 5.5 in direct-pays
11 were waiting in ranking at that time.

12 MR. DENBY: And then you gave a number of
13 how much has been paid out to date.

14 MS. NAVARRETE: How much has been approved
15 to be paid out, or how much has been ranked. And that is
16 22.5 million in Fund A and 16.5 million in Fund B.

17 MS. DENFRO: Thank you.

18 CHAIRMAN O'HARA: Mr. Beck.

19 MR. BECK: I represent a couple of people
20 who have pre-approved encumbered funds. And they are
21 extremely shocked to find out that their funding had been
22 unencumbered. We saw the magnitude of being \$38 million
23 being taken away from the whole pre-approval process, in
24 other words, what -- The questions are: What does
25 encumbering mean now that the ADEQ has unencumbered funds?

1 How is the pre-approval going to work, and what does
2 encumbering mean? Or is it just completely by the
3 wayside? How is the pre-approval system going to operate
4 with no encumbering of funds? How is ADEQ going to ensure
5 the funds are available and ready for payment on the
6 originally established pre-approval and encumbered
7 projects? Those are the three main questions.

8 The other thing, too, when we went back and
9 reviewed a few things, the only way that we've ever been
10 able to find on how funds could be unencumbered, which
11 ADEQ had actually established on how unencumbering was to
12 be done, was threefold. First one was to ask the person
13 with the pre-approval if the work was completed and no
14 work was going to be conducted on that pre-approval. Then
15 the funds could be unencumbered and put back in the
16 general SAF.

17 The second one was completion of all tasks on
18 the pre-approval and the person had signed a certification
19 saying that there was no money left.

20 The third one was a completion of goals in the
21 pre-approval of a residential standard was something to be
22 done.

23 So we need to do -- we want to know how the
24 unencumbering was done beforehand when only three
25 established methodologies had been agreed to in various

1 stakeholder meetings. We need to have information on all
2 this information. And to comply again with 49-1014
3 written notice needs to be applied to or given to the
4 regulated people on how all this stuff is going to
5 operate.

6 CHAIRMAN O'HARA: Thanks.

7 Judy, you have some kind of mechanism or some
8 reserve, right? You unencumber the money. There is
9 still, you feel, sufficient enough money to pay for a
10 pre-approval that comes in?

11 MS. NAVARRETE: I don't want to call it a
12 reserve. We have a cash balance in each fund, yes. As
13 you can see, we are not getting as many applications -- we
14 are not getting more requested than we have revenue to
15 cover.

16 CHAIRMAN O'HARA: So you haven't -- you've
17 got a lot of history to project how much you are going to
18 need in a given month?

19 MS. NAVARRETE: Right, right. If you go
20 back over the requested amounts and the -- and then paying
21 off some of your debt and what comes in every year, there
22 is no reason why the fund can't operate on a cash
23 balance -- cash basis.

24 CHAIRMAN O'HARA: Somebody who has a
25 pre-approval is not going to submit a claim and wait

1 several months for the money?

2 MS. NAVARRETE: No.

3 CHAIRMAN O'HARA: Thank you.

4 Any other comments?

5 Thank you, Judy.

6 MS. CLEMENT: Mr. Chairman, don't you have
7 comments right there?

8 CHAIRMAN O'HARA: I don't think it's on this
9 topic.

10 We are going to go back to Item 7 which is
11 discussion of the declaration of environmental use
12 restriction process, DEUR process, and the fee rule,
13 presentation by Andrea Martincic.

14 MS. MARTINCIC: I had asked for this to be
15 on the agenda, actually, a couple months ago. So I don't
16 know how familiar the Commission members were on that
17 process. I have been going to those meetings, and I
18 haven't seen very many people from the UST community at
19 those meetings. And the DEUR is going to impact the UST
20 community. So I just wanted to sort of give everyone a
21 heads-up.

22 And what they're talking about is a \$5235 price
23 tag for an institutional DEUR, and the engineering one
24 would be obviously much higher than that. At one of the
25 last meetings -- The main point I also wanted to bring up

1 that was brought up by an attorney with one of the cities,
2 I think, at the last DEUR meeting was the fact that these
3 costs are going to be reimbursable through the SAF, if
4 you're eligible.

5 And what that entails to the SAF fund, I think,
6 we need to look at. And the reality could be that
7 cleaning up a property to residential standards could
8 potentially be less costly than applying a DEUR. And
9 whether or not that is something we, as a Policy
10 Commission, need to look at is something I think we may
11 want to have a discussion about or at least look at. I
12 think it seems with the SAF funds -- I mean, we're hearing
13 from Judy there is enough money in there to deal with
14 current incoming applications, but I don't know if they're
15 projecting what the DEUR is going to do to that and
16 whether or not they're talking about putting that fee back
17 into the SAF.

18 There is just a lot of issues, I think, from a
19 UST community standpoint we ought to be vocal about
20 because our concerns I don't know are completely being
21 heard at these meetings all the time. I would just
22 encourage everyone to get involved.

23 CHAIRMAN O'HARA: I don't know if DEQ has a
24 position on this, yet. Maybe come back with one. If
25 someone demonstrated today a DEUR -- it is more cost

1 effective to go to residential standards than to go to a
2 DEUR, would they not pay for it?

3 MS. MARTINCIC: Right, that's the policy
4 right now.

5 CHAIRMAN O'HARA: Even though it is less
6 expensive?

7 MS. MARTINCIC: Right. It is a reality that
8 needs to be looked at, I think, because DEQ, it is my
9 understanding they are seeing that as a business decision
10 that's made by a business owner, whether or not they
11 choose to spend the money to clean up to a residential
12 standard because I think in the past maybe it's always
13 been more expensive usually.

14 CHAIRMAN O'HARA: Is there some requirement
15 in your CAPs to show three alternatives and the least
16 expensive? Isn't there some requirement that the most
17 cost-effective strategy is the one that's accepted?

18 MR. GILL: Unless you can show reason for
19 choosing --

20 CHAIRMAN O'HARA: I'm just wondering if
21 there needs to be any rule changes or anything.

22 MS. MARTINCIC: It is just something I
23 wanted to alert the committee to -- or our Commission to
24 and just for people to be aware. And maybe we need to do
25 a little more research into it as well and see if it's

1 something.

2 CHAIRMAN O'HARA: Shannon.

3 MS. DAVIS: Mr. Chairman, as this DEUR issue
4 has evolved -- And it is going to continue to be part of
5 our environmental remediation work over the years,
6 financial insurance and DEURs. It was our desire as a
7 agency to be flexible in granting DEURs or using RBCA.
8 And I think it's absolutely appropriate for the Commission
9 to take up and to give recommendations to the agency, how
10 they see us doing our business best. It was just our
11 desire as we are trying to sort out processes in our
12 program to be as flexible and as accommodating as
13 possible.

14 We would welcome your thoughts on the matter.

15 MS. CLEMENT: Mr. Chairman, question for
16 Andrea. Andrea, are these the fees that are upfront
17 basically?

18 MS. MARTINCIC: Yes.

19 MS. CLEMENT: And then is there another fee
20 associated with how much time and materials it takes for
21 the agency to oversee it? Or is that the fixed fee?

22 MS. MARTINCIC: That's all incorporated,
23 right.

24 MS. CLEMENT: It is a fixed fee regardless
25 of the intensity of effort?

1 MS. MARTINCIC: Right. Part of my initial
2 concerns were that early on in the process there was
3 information provided that showed that there will be a
4 number of UST sites that will need institutional controls
5 at that \$5,000 price tag. And they are the most -- by
6 far, the most numerous sites that will be getting these.
7 And in reality, the most costly sites actually for the
8 Department to maintain are nonUST sites.

9 And my concern is that as a community, we are
10 bearing the brunt of those costs in order to -- for other
11 interests to be served. So I just think we need to get
12 involved and just pay attention and look into it. I think
13 there is going to be a public hearing in the next
14 couple -- I don't know that they have it posted. Amanda,
15 have you guys posted it --

16 MS. STONE: Amanda Stone.

17 MS. MARTINCIC: -- in the administrative
18 code?

19 MS. STONE: We are just finalizing. It
20 should be over at the Secretary of State within the next
21 few weeks. There will be a formal 30-day comment period.

22 MS. MARTINCIC: After that. It is timely.

23 MS. DAVIS: Mr. Chairman, if I could just
24 ask the indulgence of the Commission. I want to pick up
25 on Andrea's comment about a perception that UST is bearing

1 more the brunt because what we -- as an agency, we tried
2 to impose sort of a onetime fee on all kinds of sites; and
3 we found that absolutely impossible. No one in the nation
4 has done it, and we couldn't figure it out either. So
5 what we've done is we've come back in and tried to break
6 it down by types of sites.

7 Amanda, if you could just talk about that a
8 little bit and maybe where the \$5,000 fee came and what
9 opportunity folks will have to comment on the -- how
10 equitable that fee is.

11 MS. STONE: We've had a lot of stakeholder
12 meetings on this issue over the last year and a half. As
13 a matter of fact, we were ready to propose this rule at
14 this time last year. At this time last year, we pulled
15 that back because of UST stakeholder concerns; and so
16 we've worked that through that process. We got some
17 really good comments regarding duplication of funding
18 where we were double billing essentially. Those were some
19 comments John Pearce and some others brought up, some
20 really good comments around that.

21 As a result, we wrote the rule this spring in
22 the stakeholder process. The fee went down substantially,
23 and the fees that the UST folks are charging is based on a
24 ten-year monitoring schedule. The other sites that are
25 paid are paid upfront based on a 30-year monitoring

1 schedule. That was something we worked with through our
2 technical internal people and also with stakeholders.

3 So what you're getting for your \$5,000 --
4 actually, it is \$4600, if you don't pay the release fee
5 upfront. What you are getting essentially for that cost
6 is ten years of DEQ oversight, ten years of monitoring the
7 DEUR to make sure that its being applied appropriately,
8 ten years of tracking changes in property transactions,
9 things of that nature. Yes, 6,000 -- or \$5,000 is a lot
10 of money, but there is a lot of DEQ staff time that's
11 going to be involved in that ten-year period of time to
12 ensure appropriate oversight.

13 So I would be happy at some point, if the
14 Commission is interested, to come to another meeting and
15 give another presentation on DEURs or maybe a technical
16 subcommittee meeting. That might be more appropriate. I
17 would be happy to do that.

18 MS. MARTINCIC: I just know this is a major
19 issue for APMA members. And 4,000 or \$4600 is still a
20 substantial fee in my members' eyes. We still have --
21 we're still not happy with that. I don't know how other
22 Commission members feel, but APMA is involved in this
23 process. And I just wanted to let other people know about
24 it in case it is not on anyone else's radar screens and
25 also bring up the issue of whether or not we need to do

1 anything else on the residential cleanup issue of could
2 that potentially become less costly to do that than to
3 have an institutional DEUR or an engineering control DEUR.

4 CHAIRMAN O'HARA: If I understood you
5 correctly, the cost is for the cost of administering and
6 monitoring from the administrative standpoint of DEQ
7 personnel?

8 MS. MARTINCIC: Right. We were given a
9 number of background data on that. I guess it's whether
10 you feel that's a justifiable cost.

11 CHAIRMAN O'HARA: That's a reimbursable
12 cost?

13 MS. MARTINCIC: Under the SAF, yes. If you
14 are eligible, they said that would be reimbursable under
15 the SAF.

16 CHAIRMAN O'HARA: From an SAF perspective,
17 if they didn't have the DEUR, they would still be doing
18 the monitoring and it will still be paid through the SAF.

19 MS. MARTINCIC: Before what was in place, if
20 I understand correctly, it was done all by the county.
21 And then legislation came in 2001, I think --

22 MS. DAVIS: 2000.

23 MS. MARTINCIC: 2000. -- and created the
24 DEUR, but the agency never had any kind of fee mechanism.
25 But at the same time, though, the agency had been

1 processing DEURs in that time line without a fee in place.
2 So there is just -- there is just a lot of issues there.

3 MR. GILL: The concern that I had is I
4 believe, based on what limited understanding I have of
5 the -- what went into establishing the fees, is I believe
6 that DEQ has underfunded themselves, which obviously would
7 make the fee even higher if they were more funded.
8 Because the ten-year -- I don't know where the ten-year
9 time period came from. Every one of us consultants know
10 the sites that are 30 years that haven't gone down hardly
11 at all. So I don't know what assumptions were put in
12 place, what had to be done to that site to establish that
13 a ten-year time period. If DEQ ends up being stuck with
14 30 years or 20 years, they are woefully underfunded.

15 MS. MARTINCIC: Those are the engineering
16 controls, they're saying.

17 MR. GILL: That's what I am saying. I don't
18 know where that ten years came from. If we had a -- if
19 there was a technical subcommittee meeting, that would be
20 what my mind would be, is to find out where -- what
21 assumptions went into place to establish that ten years
22 because the fee is a huge issue. DEQ could be woefully
23 underfunded.

24 If some of the assumptions that went into it is
25 that the source was going to be remediated and, therefore,

1 you were left with anything that was outside the source,
2 that might be completely appropriate. I don't have that
3 information, so I don't know where that came from.

4 MS. STONE: Mr. Chairman, yes, that was one
5 of the assumptions that went into that ten-year time
6 frame. There was also some other discussions around some
7 natural attenuation sites that are in OAM. That may be
8 slightly less than ten years; some may be slightly over.

9 In the interest of trying to be as fair as
10 possible and to reduce that fee as much as we possibly
11 could -- and I completely agree with you, I think we are
12 absolutely bare bones at this point on the fee
13 calculation -- we picked ten years.

14 Something else I wanted to point out. There was
15 a mention about whether it's pay upfront or pay later.
16 The statute actually contemplates a onetime upfront fee.
17 That's why we're doing that.

18 Also, just a third point, the DEUR doesn't go
19 away after ten years. You all know these. We are just
20 collecting enough money to make sure we have oversight
21 costs after ten years. If there is a site that we are
22 concerned about or is a priority, certainly we will
23 continue actively monitoring it past ten years. The use
24 restriction stays in place. The legal requirement for the
25 property owner to maintain that never goes away.

1 MS. CLEMENT: It sounds like the funding
2 mechanism will at the end of ten years. I totally agree
3 with Hal on this. I have heard the ten-year time period
4 be used as the de facto estimate for the natural
5 attenuation time period. I think there is a fundamental
6 issue here in terms of what is the database necessary to
7 predict in the future. And I do really hope we look at
8 this in more detail because it's both expensive upfront,
9 and I don't think it's going to provide the agency the
10 necessary resources over time.

11 MS. DAVIS: Mr. Chairman, could I suggest
12 that Amanda prepare a more in-depth presentation at the
13 technical subcommittee meeting, if that would help.

14 CHAIRMAN O'HARA: It would.

15 Any other comments or questions?

16 MR. BEAL: Yeah. I feel it is a very good
17 topic. I'm kind of concerned about the impact of DEURs
18 and insurance and just the overall operation of the
19 program, kind of going to where it's cheaper to clean up
20 to residential than use a DEUR and, yet, it is not
21 allowed. If there is an opportunity there to save some
22 money, perhaps it should be looked at right now upfront.

23 Part of it, yes, we're behind in our
24 developmental knowledge of the impact of DEURs, the
25 adequacy of the DEUR to do the job, and the cost of the

1 DEUR, whether it is going to be necessary or ongoing or
2 just where -- what are we talking about in terms of
3 applications. I think we start -- it is my understanding
4 the institutional control may require more money than the
5 actual monitoring and maintaining of the DEUR
6 registration. So there is things I don't know.

7 MS. MARTINCIC: Actually, I think the
8 institutional control is really more of the paperwork on
9 the property. It's less work. The engineering control is
10 where you have an ongoing. That one, I think, the time
11 line is 30 years; is that correct? So they have come up
12 with two separate DEUR fees. The engineering one is going
13 to be much more costly than the 5,000 for the
14 institutional.

15 I guess my concern is that since the
16 institutional is primarily paperwork and sort of just
17 keeping it, maintaining it in a database over time, I
18 question that \$5,000 price tag for that. But we'll
19 discuss it more in the technical meeting.

20 MR. BEAL: Andrea, is the technical meeting
21 a place to have a discussion like this?

22 MS. MARTINCIC: I think that's fine.

23 MR. BEAL: Brought out and brought back
24 here?

25 MS. MARTINCIC: Yeah.

1 CHAIRMAN O'HARA: Any other comments or
2 questions?

3 Thank you, Andrea.

4 Moving on to Item No. 8, discussion of SAF
5 eligibility for new releases, SAF mission and purpose.

6 MS. MARTINCIC: This was another one that
7 was -- I had on the agenda a few months ago because as a
8 new person to the Commission, there was just a lot --
9 there seemed to be a lot of -- I don't know if confusion
10 is the right word, but different ideas about what really
11 the purpose of the SAF is and whether it's changed and
12 whether it should change in the future. And I just wanted
13 to bring it up as a discussion point.

14 It is my understanding that some of the
15 Commission members were here when it was first developed.
16 And I thought maybe they could share with us new
17 Commission members what the purpose had been in its early
18 creation and just get thoughts from other folks on that
19 because I think it is important as we move into this
20 reform group that Shannon mentioned earlier in the meeting
21 that we have a clear understanding of what the initial
22 mission of the SAF was, maybe how it's changed, and
23 whether it should -- does it need to go more back to its
24 original roots? Does it need to change completely for the
25 future? The big picture.

1 CHAIRMAN O'HARA: Before we get into
2 details, is this topic going to be part of the roundtable
3 that we're having that's going on with the SAF and where
4 we are going to go from here?

5 MS. DAVIS: I hope so.

6 CHAIRMAN O'HARA: It would be very helpful.
7 I don't know if anybody has information that was here back
8 on September 15th of '89.

9 MS. CLEMENT: Sorry. I'm an old-timer.

10 CHAIRMAN O'HARA: Please enlighten us.

11 MS. CLEMENT: I was actually within the
12 agency and in charge of the corrective action portion of
13 this program at that point in time.

14 And just to give a little perspective, it was a
15 brand-new program. I think we had 11 people working at
16 that point in time responsible for all of the oversight
17 except for compliance. Needless to say, we were
18 overwhelmed, underfunded, and undertechnically skilled, I
19 think would be fair to say.

20 But the thing that really hit us hard was how
21 many people would be coming. Lisa Lynde was the
22 compliance unit manager. The actual program was split up
23 in between two units and we were split out actually
24 between two sections. So we had to work together very
25 closely to implement things.

1 But we were seeing an awful lot of Arizona,
2 decent, hard-working business people coming into our
3 offices that we were bankrupting through no fault of their
4 own. They had basically followed the rules of their
5 businesses. And as the program was implemented and as the
6 number of releases were reported, these folks didn't have
7 either the technical expertise or the funding necessary to
8 do the work that needed to be done to protect public
9 health and the environment.

10 So we sat down and looked at what a few other
11 programs were in the leadership and what EPA was promoting
12 and said, "We need to fund the Arizona business people,
13 particularly in the rural areas, that do not have the
14 resources or the expertise to deal with this situation
15 before we put everybody out of business and before we
16 don't have petroleum supplies in the rural areas." So
17 that was the original intent.

18 I was there during the drafting stages; and
19 actually Martha Seeman, Lisa Lynde, and myself wrote a lot
20 of the original statutory language with a bunch of
21 additional lobbyists. When we started taking this into
22 the political arena -- And we were all very naive,
23 frankly, at that point in time. We had originally talked
24 about being a qualifier as a number of tanks per owner so
25 that we were really addressing those folks that didn't

1 have the economic resources to deal with the situation.

2 And it became abundantly clear that we were not going to
3 get an SAF in Arizona unless we included all owners and
4 operators in the program.

5 And as a consequence, I think staff felt, within
6 DEQ, that the issue was so important to the business
7 people in Arizona that we opened up the program willingly
8 to every owner and operator. And having sat through all
9 of that, it was not a hard sell once we did that, once we
10 opened up the program, to not be limited by number of
11 tanks or financial resources. Then it was pretty much
12 welcomed at the legislature.

13 But, however, to deal with and to prioritize the
14 small owners and operators, what we attempted to do was
15 put the ranking system in place. The points originally
16 were meant to always ensure the people that needed it the
17 most got the money first.

18 And unfortunately, as I've sat through some of
19 these Commission meetings, what's happened is because you
20 get additional points for the delays in receiving your
21 funding, I don't believe that's actually occurring now,
22 that people that have the greatest need are getting the
23 funding first. We can all talk about parody and fairness
24 and all of that, but I'm giving some perspective.

25 And then the second thing we did was we put

1 together a loan program because we wanted to be sure that
2 those folks that were, again, in need of financial
3 resources had available funding to upgrade their tanks
4 when the upgrade requirements came in place. So that
5 was -- it is my perspective on the original intent of the
6 program.

7 MR. BEAL: And as a pleader, one of the
8 people of the rural areas that didn't have the money, that
9 is a very accurate statement. It was not a loan but a
10 grant program that was developed out of it. Part of it
11 was to help us along. The only thing that was -- at that
12 time it was designed to sunset at the end of the ten
13 years, and that would have been the end of it, just flat
14 stopped.

15 And since that time, it has evolved a little
16 bit, and that's where we are today. It is a very good
17 summary of how this thing got started.

18 CHAIRMAN O'HARA: When I came to the state
19 in '92, they hadn't paid the claims; and the fund had
20 about \$50 million in it. And the first claim, I think,
21 was paid in early '93. But the legislature saw that big
22 pot of money sitting there and nobody really using it. So
23 they -- I think they took 25 million out of it. So there
24 was never a ranking in the state really until, I think,
25 like, '94, '95. There was never a shortage of money.

1 MR. BEAL: It just went to show, when you
2 look at \$50 million, they thought it was an unbelievably
3 large pile of money for this program. That shows just how
4 much we knew about what we were getting into, and the fact
5 that we hadn't had rankings is because we hadn't had the
6 development of any claims to pay. The money started
7 coming in, but we didn't know what the problem was. We
8 didn't even see the ground swell of LUSTs until four or
9 five years after the program started. Just beginning to
10 see the impact of it. And the story is there for everyone
11 to see now.

12 CHAIRMAN O'HARA: The ranking -- what you
13 mentioned about the ranking is actually true. At one
14 point I think the points were up to 98. They deemed it
15 couldn't go higher than 100, but it would have been higher
16 than 100. Even if you were completely financially
17 insolvent, 50 points or 40 points for financial, and
18 complete risk of site for 50 points, you would still have
19 to wait to be eligible.

20 Other states have dealt with that financial
21 prioritization system a little bit differently. In
22 California, it is not really financial. It is
23 residential -- it has four different categories. You
24 don't even get to the deed category until you pay the A,
25 B, and Cs first. A, B, and Cs are residential, A, and

1 small companies, B, and C. So even though you have --
2 after that it goes to first in, first out, how long you
3 have been sitting there.

4 If you are a small mom and pop and come to the
5 California fund today, you go right to the top. That may
6 be something we can have a discussion on, if the
7 Commission feels it is appropriate. If the number is at
8 60 like it is now and the nonMaricopa is basically
9 current, it is not a pressing need that it was maybe two
10 years ago. You should get 50 points for financial, if you
11 are truly needy. You are almost at the top.

12 MS. NAVARRETE: In Maricopa.

13 CHAIRMAN O'HARA: Right. And nonMaricopa
14 are most of the ones applying for financial need; you are
15 already getting paid. Maybe the need is not there
16 anymore.

17 I would encourage anybody along -- that was very
18 educational -- anybody that was here that dealt with the
19 legislature, the consultants' perspective or
20 owner-operators' perspective, have more information on the
21 evolution, to bring that forward. It would be helpful,
22 particularly in these stakeholder meetings.

23 MR. BEAL: I would think the question is
24 now: How are you going to go forward from here and do it?
25 I'll offer this observation. It is rather simplistic, of

1 course, but I am a retailer. And I'll flat tell you that
2 the customer always pays. So if you want the environment
3 protected in areas other than in the cities, then you are
4 going to have to find ways to get the money out there to
5 do it.

6 The fund really has an effect of consumer-based
7 taxation, so all of the gasoline sold contributes to the
8 environmental well-being of the state. And then the ADEQ
9 has the application of those funds to all areas that need
10 the money to protect the environment; and you can
11 prioritize need, risk, whatever you come up with as a
12 solution to it. It actually acts as a smoothing mechanism
13 for the funding. Otherwise, you're going to have one or
14 two retailers of gasoline eventually.

15 CHAIRMAN O'HARA: As far as the Commission
16 is concerned, I know we are having the stakeholder
17 meetings. It brings up a good issue. I think one of the
18 issues from the public is the results of that roundtable.
19 How are those results of that roundtable and the
20 Commission going to interact? Do those results then maybe
21 come to the Commission for our discussion? Or is it going
22 to be a parallel-type analysis? What do you guys think?

23 MS. MARTINCIC: Shannon, do you know in
24 terms of the dynamic of that group, is the UST Commission
25 represented in that group?

1 MS. DAVIS: Absolutely. There is three or
2 four folks -- Mr. Chairman, three or four folks from the
3 Commission, I believe, that have been asked to be on that
4 roundtable. And, I mean, I think that's something that we
5 can discuss as we go along. There will be at least one
6 meeting with the director before our September meeting and
7 then a couple more before the October meeting.

8 I don't think -- The recommendations will
9 probably come at the very end of that process. I think we
10 will probably do just a lot of heavy lifting and sorting
11 and then towards the end of October have some document or
12 some product that we can pull the director back in and
13 work with him on.

14 MS. MARTINCIC: Maybe one way to involve the
15 Commission is we could have an ongoing item on the agenda
16 each month while this group is meeting and then those
17 members who are participating in the group can bring to
18 the Commission what's being discussed and get input from
19 the Commission members and the public, too, and go back to
20 those meetings with that.

21 CHAIRMAN O'HARA: That's a good idea.

22 Any comments on the SAF mission and purpose?
23 Theresa.

24 MS. FOSTER: Mr. Chairman, a number of years
25 ago Patricia Nowack provided the Commission a report that

1 indicated exactly who was paid and how much they were
2 paid. And this might help if you look at the issue of are
3 those small owner-operators being taken care of.

4 The report, I thought, was very beneficial
5 because it basically showed where the bulk of the money
6 was going, and it's to large corporations. I don't
7 remember seeing a lot of mom and pops listed on it. So
8 maybe that's something to consider. Maybe we need to look
9 at who is actually getting paid as of now.

10 And just to let everyone know, state agencies
11 can't tap into this fund. So there is a lot of state
12 agencies with fuel tanks, and they can't come into the SAF
13 fund at all.

14 MS. DAVIS: Separate and distinct from the
15 legislature.

16 CHAIRMAN O'HARA: Any other comments?

17 MS. DAVIS: Mr. Chairman, Theresa, is that a
18 staff request? I just want to make sure we're clear if
19 that's a request and Judy understands the request.

20 MS. FOSTER: If the Commission wants it.
21 I'm just suggesting.

22 MR. TSIOLIS: Would it be easy to do that,
23 to identify based on, say, sales? That's a tough border,
24 who are big and who are small. What definition do you
25 use? I think the information would be useful.

1 MS. NAVARRETE: It could be done on the
2 number of tanks that they own, I would imagine. I would
3 have to go back and see from history who remembers the
4 report, where it came from, how it was done.

5 MR. TSIOLIS: What standard do you use for a
6 distinction between mom and mop and a big corporation?

7 MS. NAVARRETE: The number of tanks that
8 they own. That would be my definition.

9 MS. TSIOLIS: Is that what they used?

10 MS. NAVARRETE: That would be my definition,
11 but I'm not sure that was the definition that was used
12 because I'm not familiar with the report. If they own a
13 thousand tanks, I don't think they would be a mom and pop.

14 MS. MARTINCIC: I said if there is one tank
15 and they are doing incredible volume.

16 MR. TSIOLIS: I think that would be
17 incredibly useful information.

18 CHAIRMAN O'HARA: If you have it.

19 MR. TSIOLIS: If it's possible.

20 MS. FOSTER: Mr. Chairman, I think the
21 report didn't break it down by tank size or anything like
22 that. It basically just put out there a list of people.
23 You could go pretty much through the list and say there is
24 the major oils, there is the cities, there's the counties.

25 MR. TSIOLIS: That would certainly make it

1 easier, that approach, for DEQ to come up with a list
2 without even distinguishing the number of tanks.

3 MR. GILL: I don't think it necessarily is
4 telling you whether -- that the big corporations are
5 getting -- or actually, that the small owner-operators are
6 not getting paid when you look at the total volume, the
7 total amount that's being paid. It is not telling you
8 that because obviously the major oils would have many,
9 many more.

10 MS. MARTINCIC: You have to be able to look
11 at the number of sites in Maricopa County and take that
12 into account because if the majority of the sites in
13 Maricopa County are, granted, owned by major sources, of
14 course, you have a higher likelihood of having more tanks
15 and more issues. I don't think that's what Theresa -- I
16 don't think that was the intent. It was just to look at
17 who has been getting paid from it.

18 MR. GILL: I guess I don't understand how
19 looking at those numbers would tell you whether or not the
20 small owner-operators are getting paid or not.

21 MS. MARTINCIC: You will see their name,
22 whether they have gotten a check.

23 MR. GILL: If you are just looking at the
24 total amount paid out per these different companies, that
25 doesn't tell you -- because they have got many, many more

1 tanks, many more applications that they have submitted.

2 MR. BEAL: Perhaps a better question is how
3 many small owner-operators have claims pending.

4 MS. CLEMENT: I think this does tell us
5 where the money goes. It may not tell us specifically
6 which owner-operator is being paid or not being paid. But
7 this tells the state where the money that they're
8 collecting in taxes is going. And I think that's a really
9 important thing for this Commission to understand.

10 CHAIRMAN O'HARA: Judy.

11 MS. NAVARRETE: Do you want to give me a
12 period of time that you want this done in? I mean, a
13 period of time to -- that you want the report to cover? I
14 can't -- from now -- from the beginning to the end or
15 from --

16 MS. MARTINCIC: Can you do it from the
17 beginning to the end?

18 MS. NAVARRETE: Oh. I don't know.

19 MS. MARTINCIC: I am just thinking in terms
20 of the reform group. I think that would be valuable
21 information as well to be able to see the changes and if
22 there have been changes and if there haven't been in terms
23 of the payouts. It is just something. If it's not
24 reasonable...

25 MS. NAVARRETE: From '95, Mike?

1 CHAIRMAN O'HARA: I will leave it to you.

2 MS. DAVIS: Could we just go back. We got
3 Bob Rocha standing on this one. If we could just go
4 back -- I think we can see what's there, and we will
5 provide the most comprehensive product we can.

6 MS. MARTINCIC: I didn't mean to create such
7 controversy. Sorry.

8 MR. ROCHA: Thank you. The answer -- Bob
9 Rocha, for the record. Just wanted to make sure that
10 we -- we're asking for something that is obtainable,
11 reasonable.

12 Trying to go back forever, I can tell you the
13 guy that used to maintain the records was the state
14 comptroller and that was me. We don't have those records
15 that we would need to research to find out who paid what.
16 You need to be reasonable and practical, and we'll do the
17 best we can in going back. But we don't know if we can go
18 ten years, three years, or how long. Thank you.

19 CHAIRMAN O'HARA: Thanks.

20 Any other comments?

21 MS. CLEMENT: To address the question, I
22 think, that Hal brings up, which is are the small owners
23 and operators getting paid, how do we get information
24 regarding that? I don't know. Judy.

25 MS. NAVARRETE: Probably pull a report of

1 the tank owners, what is considered a small
2 owner-operator, how many tanks they own.

3 You know what? I could ask my programmer. We
4 kind of have to have a -- like, a little meeting and
5 decide how best we would come up with that information.
6 Do you want to know history, or do you want to know what's
7 waiting in ranking now in Maricopa County because that's
8 the only thing waiting in ranking to be paid.

9 MR. BEAL: I think my definition is fewer
10 than ten tanks is a small -- represents a small
11 owner-operator. If you looked at that in your catalog of
12 people waiting to get paid, how many are there?

13 MS. NAVARRETE: There would have to be a
14 correlation between USTRACK and the SAF database as
15 defined -- first find the owners and then find some
16 correlation in our database to those owners, probably by
17 owner ID. I'll have to think about it. It may --

18 MR. BEAL: That's how we defined it as far
19 as the Commission.

20 MS. NAVARRETE: There is information in two
21 databases now. One is the USTRACK database which contains
22 all the tanks and the information and the owners, owner
23 IDS, and the SAF database. So I have to ask the
24 programmers what they can come up with to match up someone
25 that has ten tanks or less.

1 MR. BEAL: The definition of small is ten or
2 less.

3 CHAIRMAN O'HARA: Go ahead, Ian.

4 MR. BINGHAM: If I may. I'm a little
5 nervous of using ten tanks as a marker. Things that come
6 to mind is a car dealership may only have two tanks, but
7 clearly a car dealership -- Brown & Brown I would not
8 consider a small owner-operator in financial need.
9 Grocery stores for their warehouse may only have three or
10 four USTs for their tractor-trailers.

11 Again, there is a lot of things we are going to
12 have to look at. Just using ten, from my experience, is
13 not going to get us there. I really do think internally
14 we can talk. I know we know what you're asking. And I
15 think internally we can probably get together and best
16 figure out how to answer the question you have. I think
17 we all have a pretty good idea just exactly what it is you
18 want.

19 CHAIRMAN O'HARA: Do you know if the DOT
20 tracks who pays -- which owner-operators pay the money?
21 Is that easy to get? I think we're focused on who is
22 getting the money. We should also focus on who is paying
23 the money.

24 MR. SMITH: Yes, they do.

25 CHAIRMAN O'HARA: In general, it is a tax on

1 the public. But to the extent that some owner-operators
2 have ASTs and don't have to pay that tax, then it truly is
3 a burden on the owner-operators that are competing with
4 that. I think it is important not to just look at what
5 they are being paid, let's look at what they are putting
6 in also. It may be representative.

7 MS. FOSTER: Mr. Chairman, I think we have
8 the information already available. Every owner has a
9 financial needs point assigned to it. Let's look at the
10 highest financial need points. Those are going to be the
11 owner-operators that are in desperate need of the fund.

12 CHAIRMAN O'HARA: Is the question -- I am
13 trying to get to the question. Is the question whether
14 they are getting paid or not? Obviously -- are they
15 getting their money denied? They're not getting their
16 requests paid? Are they waiting? Is that the question?

17 MS. FOSTER: I think the question that I
18 have is when we looked at it the last time, we did a
19 snapshot in time. It was amazing that there weren't many
20 small people in financial need. Most of the money went to
21 those individuals who had the financial wherewithal to
22 recover their costs.

23 MR. GILL: Do you happen to remember how
24 many years ago?

25 MS. FOSTER: I keep everything. I am going

1 to go back to my office and look.

2 MR. GILL: I know when the fund first
3 started, when we were first putting applications in -- and
4 I know that I did some of the first ones -- I was
5 submitting them for major oil companies, for the major
6 utilities. It took two or three years for the small
7 owner-operators to even start submitting applications
8 because they didn't know how to do it.

9 At the very beginning, all the claims that I
10 submitted were getting funded and paid. They were all for
11 major corporations. A lot depends on how old the report
12 was, too.

13 CHAIRMAN O'HARA: Okay. Is that
14 sufficiently unclear?

15 MR. ROCHA: Bob Rocha again. Just to make
16 sure --

17 MS. DAVIS: You really made Bob nervous
18 today.

19 CHAIRMAN O'HARA: It is open-ended.

20 MR. ROCHA: Whatever definition we come up
21 with, we'll be sure to run it by several of you as to what
22 is the definition. But I think there is so many
23 definitions, that to try to design an answer -- or try to
24 design a system here in this meeting, it is almost
25 impossible.

1 Rest assured that we will look at the
2 information, try to talk to all of you as to what is best
3 and how do we attack the question that you have raised to
4 come up with the best answer. But I don't think any other
5 discussion that we have is going to be beneficial to the
6 group at this point. So let us get back to you.

7 MS. DAVIS: Move on, shut up.

8 CHAIRMAN O'HARA: Any other comments or
9 questions on this topic?

10 MS. NAVARRETE: Judy Navarrete. I would
11 like to know what question -- What are you asking me now
12 because --

13 MR. KELLEY: No more discussion.

14 MR. ROCHA: We will discuss it.

15 MS. NAVARRETE: Okay.

16 CHAIRMAN O'HARA: Moving to Item No. 10 as a
17 discussion of agenda items for the next Commission
18 meeting. I have one comment. I'll hold off on that one
19 until we take suggestions from the Commission members.

20 Hal, you had a suggestion.

21 MR. GILL: I was down at the legislature
22 last week, and I was told that the DEQ had their
23 legislative agenda either presented to or were presenting
24 it to the Governor. I was wondering if the Commission
25 could get a copy of the UST legislative agenda so we are

1 kind of ahead of the curve for once because we're
2 always -- we are supposed to be looking at these and
3 seeing if there is anything we want to make
4 recommendations on. And we are always way, way behind the
5 curve.

6 MS. DAVIS: Mr. Chairman, we, as an agency,
7 aren't allowed to move forward until we have approval from
8 the Governor for our legislative package. While we
9 forward a package, it is pretty much -- we don't even have
10 any idea what we are doing until the Governor gives us the
11 authority to do that. After the Governor approves it, I'm
12 sure that we will be working with the Policy Commission.

13 I also think that -- rest assured there aren't
14 any significant USTs on that list, at least what I have
15 seen. And I think anything significant out of UST is
16 going to come from the Director's roundtable. I think
17 that's fair to say.

18 MR. GILL: That's fine. Seeing as how the
19 roundtable -- we are going to be doing that each month,
20 that will give us -- again put us ahead of the curve. We
21 are always trying to play catch up and having special
22 sessions and everything else to discuss legislative
23 issues.

24 MS. DAVIS: It's the nature of that process,
25 too. It is hard to get out of it.

1 CHAIRMAN O'HARA: Andrea.

2 MS. MARTINCIC: I would just maybe ask that
3 we on the agenda look at federal UST legislation that's
4 out there that is maybe coming to the states so that we
5 have a clear big picture of UST issues. And I think it
6 ties into the whole looking at the UST actuarial study and
7 looking at some of the issues we just got done talking
8 about and that sort of thing.

9 I know Roger had pointed out the fact of keeping
10 in mind MTBE, other contaminant-type issues. And surely
11 new federal UST legislation, which, I think, is on its way
12 to the states, will be impactful.

13 CHAIRMAN O'HARA: Shannon, could you provide
14 information on the federal?

15 MS. DAVIS: Absolutely.

16 CHAIRMAN O'HARA: Great.

17 MS. CLEMENT: Mr. Chairman, I would also
18 like to see a further discussion of what is substantive
19 policy and what is constituted by written because,
20 frankly, sitting up here I have always been thinking that
21 this bulletin meant that we were -- that the agency was
22 providing written notification. But if there is some
23 other legal interpretation of that or something we need to
24 know, we should bring that in.

25 MR. TSIOLIS: Mr. Chairman, if I could just

1 interject. The definition of "substantive policy" that
2 the legislature has put out is -- I think I'm echoing
3 Tamara's point here -- arguably at odds with what the case
4 law says. It is a very complex topic. We could spend two
5 or three hours. We've actually had in the administrative
6 law section three-hour continuing education seminars on
7 what legislative versus interpretive rules are. I think
8 that would be a huge topic maybe for a separate
9 discussion. It could swallow up a lot of what we do in a
10 monthly meeting.

11 CHAIRMAN O'HARA: Was everyone comfortable
12 with Shannon -- the comments she made with bringing the
13 policy forward and applying that statute? Was there still
14 open issues?

15 MS. CLEMENT: I think there is a couple open
16 issues. If we don't know what it is, how do we know we're
17 doing it? If we can't define "substantive policy" in a
18 small enough snapshot that you can clarify for the Policy
19 Commission, how do we know we're dealing with it?

20 The second issue, I think, that was brought up
21 today, which I was not aware of, is the interpretation of
22 written. And I just want to be sure that if we have or
23 the agency has an obligation for written policy
24 dissemination, that is being met.

25 CHAIRMAN O'HARA: Is it possible, Shannon,

1 we could get some opinion from DEQ as to DEQ's
2 interpretation of that statute and how it's going to be
3 applied? Maybe some examples, these are the types of
4 things that we feel are substantive to come forward to the
5 Commission and these are the types of things that we think
6 are not. It would give us a starting point to the
7 Commission.

8 MS. DAVIS: Mr. Chairman, yes, we can. I
9 think how that will actually work, the AG will give us the
10 presentation and then the agency will make lists as to
11 what we think belongs under which interpretation.

12 CHAIRMAN O'HARA: Does that make sense?

13 MS. CLEMENT: Thank you.

14 MR. BEAL: The other thing I am just a
15 little bit interested in is input. If we put information
16 on the bulletin board, how do we distinguish that from
17 substantive policy? If nobody has a place to look and
18 say, "This is substantive policy because it is on the
19 bulletin board," if we have information mixed in there,
20 then once again it becomes "I thought that was
21 information, not substantive policy."

22 MR. GILL: That's really what --

23 MR. BEAL: It grays the water a little bit.
24 If we put substantive policy in a spot, electronic or not,
25 that we can find it and know that this is -- it's been

1 discussed when we start mixing other things into it, I
2 think you are just destroying everything.

3 MR. GILL: That really goes back to the
4 issue. To hear somebody else speak to it, it finally
5 solidifies it in my mind. When I originally thought of
6 the bulletin board at that time, it was only for what I
7 was assuming was substantive policy, meaning it was
8 affecting all owner-operators.

9 As a matter of fact, in the document, wherever
10 it is, that kind of explains it, that's what the Policy
11 Commission was going to decide, was whether or not this
12 particular issue truly affected all owner-operators and
13 was not site specific. If it was site specific, then it
14 wouldn't be included on the bulletin. That was just one
15 component of it.

16 That's why I agree with Roger, is that if we are
17 just putting anything on there, it then -- then it's up to
18 the owner-operators to look at that and determine which
19 ones they think are the substantive policy, if we are
20 going to use the bulletin as the outlet for substantive
21 policy.

22 CHAIRMAN O'HARA: All of them have general
23 applicability to the UST program. It is not just, like, a
24 couple people.

25 MR. GILL: That was the original idea. It

1 may very well be that the information -- I think it is
2 kind of confusing because we don't know really what
3 information would be. I think that's where, Shannon, you
4 are saying you'll take a look at it and make examples of
5 what they believe meets that. That might answer that.

6 But that was the question, is -- that's kind of
7 what I thought when I first heard Shannon say, "What do we
8 mean by information?" That's why when someone mentions --
9 I took it from Brian's issues, that if this is, indeed,
10 going to be where we're presenting the 30-day time period
11 where everybody can see it before it is implemented, then
12 it truly does need to be a substantive policy or guidance.
13 We need to kind of define what types of examples we are
14 looking at.

15 CHAIRMAN O'HARA: If we could get something
16 interpretive. Thanks.

17 MS. HUDDLESTON: Mr. Chairman, some of us
18 have a vacation planned between now and the 24th and
19 probably will not get this done by the 24th.

20 CHAIRMAN O'HARA: Okay. Noted.

21 MS. DAVIS: So October meeting.

22 CHAIRMAN O'HARA: We'll put it on for
23 October.

24 Any other suggested agenda items for next
25 meeting?

1 Got one suggestion from someone in the public.
2 Leon, would you like to make a comment?

3 MR. VANNAIS: Thank you, Mr. Chairman. Leon
4 Vannais. A lot of people in the public have recently
5 received a notification that financial assurance will be
6 looked at more closely or differently starting October 1st
7 of this year by ADEQ.

8 And I was wondering if the policy Commission
9 would be able to take a look at a couple of things
10 associated with that: Just what's the process for this
11 review. What's expected to be requested from
12 owner-operators to show that they have financial assurance
13 mechanisms in place? Is there a difference between what
14 the state of Arizona considers to be a financial assurance
15 mechanism and what the federal regulations say is a
16 financial assurance mechanism? And how is this
17 information planned to be evaluated? And what is the end
18 goal of this review? What's expected to be the results of
19 this?

20 I think it is going to be -- it obviously is
21 going to affect all owner-operators in some form or
22 another, but there is very little information provided
23 with that postcard. And I was wondering of the Policy
24 Commission's ability to look at something like that and
25 discuss it.

1 CHAIRMAN O'HARA: Anybody familiar --

2 MS. DAVIS: Mr. Chairman, Ron Kern who runs
3 our prevention program sent those cards out. What I would
4 like is to ask Ron at the next meeting to give the
5 presentation that he gave at the convention -- what are we
6 calling that, the conference -- the Consultants Day
7 because he went through -- he went through, I think,
8 almost all of Leon's questions there. If the Commission
9 would like that presentation, he would be happy to do
10 that.

11 CHAIRMAN O'HARA: Commission members like to
12 see that? I would like to see it again. Great.

13 MS. MARTINCIC: Can we add to the agenda,
14 too, if we are having that financial subcommittee meeting
15 on the insurance issues on the 17th, could we have an
16 update of that -- results of that meeting here in the
17 larger Commission?

18 CHAIRMAN O'HARA: That's a standing item.

19 Any other agenda items?

20 Moving on to item No. 11, general call to the
21 public. I think I have covered all the speaker slips with
22 maybe one exception.

23 Leon, you had -- did you have another question,
24 or did we take care of it?

25 MR. VANNAIS: Yes. Thank you, Mr. Chairman,

1 Leon Vannais. I think this also mirrored what was
2 previously said by the chairman, is that the roundtable,
3 are there policies expecting to be coming out of this?
4 And if so, are these policies going to be brought before
5 this Commission?

6 I think this Commission has been very successful
7 at moving the program forward. I would hate to see two
8 separate commissions working at the same time towards a
9 common goal and having things being missed or some kind of
10 confusion created. We are just not sure here on the
11 outside.

12 CHAIRMAN O'HARA: The Commission members
13 that are on the stakeholder -- on the roundtable will
14 provide updates at each meeting. I think the end goal is
15 to have a written document that comes here.

16 MS. DAVIS: Absolutely.

17 CHAIRMAN O'HARA: They will be integrated.

18 MR. VANNAIS: Just one additional comment.

19 I have been -- the Department of Transportation does
20 maintain records of taxes paid by individual
21 owner-operators, and it is something I've looked into
22 recently. It is just difficult to obtain. I am not sure
23 about how any of the death certificates and stuff like
24 that, people who have passed, it may be difficult to get
25 that information. I also don't know how it's being

1 recorded.

2 CHAIRMAN O'HARA: Thank you.

3 Okay. Any other comments from the Commission?
4 Public?

5 Great. The next meeting is going to be
6 September 24th. It is going to be at the Carnegie
7 Library, which, I believe, is right across the street at
8 9:00 a.m.

9 No objection, we'll adjourn the meeting.
10 Meeting adjourned. Thank you.

11 (Whereupon, the proceedings adjourned at
12 11:35 o'clock a.m.)

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) SS.

2 STATE OF ARIZONA)

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